

## Ethics Committee - Town of West Seneca

**July 14, 2014 @ 5:30 P.M.**

Members Present - George P Clifford  
Amy L Carpenter  
Edward F Gehen Jr.  
Susan Kims  
James E Manley  
Shawn P Martin  
Jacqueline A Felser, Town Clerk  
Charles D Grieco, 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.

### **APPROVAL OF MINUTES**

Motion by Manley, seconded by Clifford, to approve minutes from the June 16, 2014 meeting.

On the question, Mr. Gehen referred to a statement in the minutes that "he did not think the Ethics Committee should address the current issues because they occurred prior to the committee being formed." He clarified that he was actually questioning the process going forward and whether it was appropriate to address these issues since the Ethics Committee had not been appointed. If it is appropriate, then any other issues brought to the Ethics Committee that occurred after the Ethics Code was adopted should also be addressed.

The committee agreed it would be appropriate to address any alleged violations of the Ethics Code that occurred after its adoption in 2009.

Ayes: All

Noes: None

Motion Carried

Chairman Clifford referred to §13-9(A) of the Ethics Code which states "only one member shall be a current town official, officer or employee" and stated there was some question as to whether Mr. Martin is considered an employee of the town. Mr. Martin responded he was hired as an outside contractor for the town; he is not an employee and will not receive a W-2 form from the town. He will receive a 1099 form for services he is providing in the transition to the current Attorney for the Town Charles Grieco. Mr. Grieco concurred and stated Mr. Martin is definitely not an official or employee of the town, noting there are several other lawyers and law firms that are retained by the town to handle legal matters and they are contractors, not employees or officials.

Mrs. Kims questioned if checks are being made payable to Mr. Martin, noting that he announced at the last Town Board meeting that he was recently hired by the town. Mr. Martin responded he was hired to handle one specific matter that Mr. Grieco's law firm had a conflict of interest with. He

further stated that any work he performs on behalf of the town comes through Mr. Grieco who handles it as an administrator. Mr. Grieco stated he periodically consults with Mr. Martin on matters he handled as Town Attorney and he is reimbursed for that time. Mrs. Kims questioned if Mr. Martin consults with anyone else in the town and Mr. Martin responded he does not.

Chairman Clifford suggested the Ethics Committee be notified of any and all future dealings Mr. Martin has with anyone else in the town that might impact his ethics and he should recuse himself at that time. Mr. Martin responded he is bound by the lawyer's code of ethics and if there is any appearance of impropriety he will absolutely excuse himself from any further proceedings with this committee. The current matters before the Ethics Committee both occurred after his employment with the town ceased, so he did not believe there was a conflict for him to proceed with these matters. Chairman Clifford stated that in the event anyone on the committee or from the public can present evidence to suggest otherwise, the committee will be happy to hear it at that time.

Chairman Clifford questioned if the committee will be recessing to executive session to discuss the individual issues before them. Mr. Grieco responded there is limited basis to go into executive session since they will be recommending potential discipline of a town official; however, if the person wants it to be public it is up to them and the committee can deliberate the request in executive session. Councilman Hart chose to discuss the issue in public and Zoning Board Chairman Timothy Elling stated he wanted to wait for his attorney to arrive.

Motion by Clifford, seconded by Carpenter, to adjourn to executive session at 5:55 P.M.

Ayes: All

Noes: None

Motion Carried

Committee members reconvened at 6:07 P.M.

Chairman Clifford stated the first complaint before the Ethics Committee was that Councilman Hart knowingly hired a cousin to work for the Town of West Seneca.

Mr. Martin stated there was some concern that he had a conflict of interest with regard to the issue involving Councilman Hart and he asked Councilman Hart to confirm that they had no conversations about the matter for which he was appearing before the Ethics Committee. Councilman Hart confirmed they had no conversations on this matter.

Councilman Hart stated Chief Denz and Supervisor Meegan came into an executive session and wanted to hire Daniel Walsh full-time, noting he was already on the payroll as a part-time cleaner at Town Hall. Councilman Hart stated that during that meeting he disclosed that Daniel Walsh was his cousin and he intended to abstain from voting on the appointment, not having any adequate knowledge of what the Code of Ethics said. He had looked at the Code of Ethics a couple years ago, but had not looked at it since that time and apparently missed the reference to direct descendant of grandparent. The day of the actual vote Supervisor Meegan came to him and asked him to do her a favor and second the motion and vote for Mr. Walsh. She told him she could not do it because her maiden name was Walsh and she felt people would believe that he was related to her. Councilman Hart agreed to do it and voted to appoint Mr. Walsh as full-time cleaner. He stated his lack of knowledge as to what the Code of Ethics actually said is not an excuse in this case and he has

already apologized to the public for his error. He did not know what more they could do other than rescind the previous appointment and have a revote with him abstaining. Councilman Hart stated he has 300 cousins and when Daniel Walsh's son was appointed last year he did not realize he was related.

Mrs. Carpenter questioned the wording of the Ethics Code and understood it to mean the "reporting individual" is the manager of that person and they are not necessarily reporting to Councilman Hart, so she did not see a problem. Mr. Grieco stated "reporting individual" is not a defined term in the Code of Ethics, but he thought it meant the person that should have reported the relationship.

Mrs. Carpenter questioned if it would have been the Town Attorney's responsibility to remind Councilman Hart to recuse himself. Mr. Grieco stated he did not remember the executive session and did not believe he was at that meeting.

Mrs. Kims understood that minutes are taken when a decision is made in executive session and she questioned if those minutes are available. Mr. Grieco stated there are only minutes of an executive session when the board takes an official action.

Mr. Gehen referred to the words "reporting individual" in the Ethics Code and questioned if Mr. Walsh reports to Councilman Hart. Councilman Hart responded that Mr. Walsh reports to Buildings & Grounds Supt. Steve Amoia. Mr. Grieco did not believe that was the correct interpretation of "reporting individual" and stated it would be an unusual term to use.

Mr. Gehen questioned if the information discussed at the executive session is confidential and if Councilman Hart made the comments public. Councilman Hart responded that discussions in executive session are confidential and he did not make the comments public.

Chief Gehen questioned who else was at the executive session and if Councilman Hart knew who made the comments public. Councilman Hart responded that Councilman Hanley, Supervisor Meegan, Chief Denz, Highway Supt. Matthew English and the Attorney for the Town were also present at the executive session and he had no idea who made the comments public.

Mr. Manley questioned if Councilman Hart had read the Code of Ethics and signed a copy. Councilman Hart stated he read the Code of Ethics online but did not remember if he had signed it. Town Clerk Jacqueline Felser confirmed that he had signed a copy of the Code of Ethics.

Mr. Manley questioned if Councilman Hart was aware of the Code of Ethics when Daniel Walsh's son appeared before the Town Board for a job in 2012 and 2013. Councilman Hart stated if he was he would not have voted for him, but he was not sure that he was related to him since he has 300 cousins.

Mr. Manley questioned the last time Councilman Hart saw Daniel Walsh prior to 2013. Councilman Hart responded that he sees Daniel Walsh at funerals, weddings and their family reunion once a year. He further stated he knew Daniel Walsh was his cousin when he voted for him as a favor to Supervisor Meegan.

Mr. Manley questioned if Councilman Hart was saying he violated the Code of Ethics as a favor and Councilman Hart responded he did not know he was violating the Code of Ethics because he did not recall that particular line in the code.

Mr. Martin referred to comments of some committee members concerning the "reporting individual" phrase in the Code of Ethics and questioned if Councilman Hart was aware of another section that states you should recuse yourself from voting on a relative. Mr. Martin further commented that Councilman Hart should set the standard for the rest of the town employees.

Councilman Hart responded that he was aware of that section and was very familiar with the Code of Ethics now. He was not denying that he should not have voted for the appointment, and if he had known he would have continued to recuse himself. Councilman Hart stated he was going to recuse himself from voting based on principle, but when he was asked to do it as a favor he voted. He has acknowledged his error and did not know what else he could do at this point.

Mrs. Felser commented that Councilman Hart publicly apologized at the last Town Board meeting and she did not think they needed to go any further with this issue.

Chairman Clifford stated the Ethics Committee will give a recommendation to the Town Board. The committee also needs to resolve how to address subsequent violations.

Councilman Hart stated he has some very specific recommendations he will be presenting to Mr. Grieco for review.

Mr. Clifford stated the second complaint before the Ethics Committee involved Zoning Board Chairman Timothy Elling and he questioned if Dale Clarke had brought a written statement outlining his accusations.

Mr. Clarke responded he had nothing in writing and will verbally state the accusations. He had heard from a number of individuals that Mr. Elling went to the Super Bowl on an all expense paid trip, paid for by the developer, which according to the Bee Newspaper is his friend. He also heard that Mr. Elling was bragging about this at a political breakfast at a restaurant in Lackawanna. A Facebook posting confirmed this and Councilman Hanley also confirmed that Mr. Elling went to the Super Bowl after Mr. Clarke asked the Town Board to look into this issue. Mr. Clarke recited §13-3(D) of the Ethics Code and commented that it appeared Mr. Elling violated this section and possibly some other laws in stating the developer could "count on West Seneca."

Chairman Clifford stated that if Mr. Clarke makes any verbal accusations in the future he will be sent a notification to submit a written statement and if he fails to do so, he will not be heard before the Ethics Committee.

Mrs. Carpenter commented that Mr. Clarke had stated at the Town Board meeting that he didn't know how to use Facebook and she questioned where he got the information.

Mr. Clarke responded he was not going to divulge where he got the information, but she could find it on Facebook herself.

Mrs. Carpenter questioned if they were aware of any influence received because of the gift, noting she does not consider anyone guilty without facts.

Chairman Clifford questioned if Mr. Elling preferred to discuss this issue in public or in executive session and Mr. Elling responded he preferred to go into executive session.

Mr. Martin did not believe it was appropriate to discuss this issue in executive session.

Motion by Clifford, seconded by Gehen, to recess to executive session at 6:30 P.M.

Ayes: (5) Chairman Clifford, Mr. Gehen, Mrs. Carpenter, Mrs. Kims, Mrs. Felser

Noes: (2) Mr. Manley, Mr. Martin Motion Carried

Committee members reconvened at 6:50 P.M.

Motion by Gehen, seconded by Martin, to adjourn the meeting at 6:50 P.M.

Ayes: All Noes: None Motion Carried

The next Ethics Committee meeting was scheduled for Monday, August 11, 2014 at 5:30 P.M.

Respectfully submitted,



Jacqueline A Felser  
Town Clerk