



Somersworth City Council

Ethics Commission

Minutes

Non-Approved

December 11, 2012

Somersworth City Hall, Executive Conference Room

Members attending:

Commissioner Todd Marsh, John Joyal, Mark Richardson, Dan DeSantis, Alan Marquis.

Staff:

None

Guests in attendance at beginning of, or arriving during the course of the meeting:

Councilor Dale Sprague, Tim Cournoyer, Kimberly Nunan, Real Roseberry and Karyn Forbes

Press:

Oliver Jenkins, Foster's Daily Democrat

Meeting called to order at 6:31 P.M.

1. Reading of the Code of Conduct Preamble.

Chairperson Marsh read the Code of Conduct's Preamble. Article VI, 6.1

Public service is a public trust. It is the intent of this Charter to promote public confidence in representative government, uphold and expect the highest standards of ethics and conduct from all of its employees and officials, whether elected, appointed or hired. They shall maintain the highest standards of personal intent, integrity, honesty and fairness in discharging their public duties and never abuse their positions or powers for improper or personal gain. This is in the best interest of all citizens and serves to protect the integrity and reputations of city employees and residents dedicated to public service.

2. Approval of Minutes

A motion was made by Commissioner Richardson to accept the minutes from November 20, 2012 and seconded by Commissioner Joyal. Minutes accepted.

3. Review/Discussion of Code of Conduct Complaint

Chairperson Marsh provided packets of information to commission members that included the following:

- Meeting Agenda
- Non-Approved Ethics Commission minutes
- City Charter's Code of Conduct Article VI
- Code of Conduct "Quick Reference," including Article IV, Section 4.6 which is not in the code of conduct section.
- City Council Finance Committee minutes
- April 8, 2010 Legal Opinion
- Questions answered by City Manager Bob Belmore
- Requested information provided to complainant Tim Cournoyer by Finance Director Scott Smith.

Chairperson Marsh briefly reviewed the discussion from the previous meeting, including some commissioner's belief that the alleged conflict of interest event might not be verifiable enough to be considered an "event" to meet the ninety (90) day time limit to be accepted for review. However, Chairperson Marsh stated documents of information were provided commission members in the event the commission moved forward with the complaint.

Chairperson Marsh stated he provided Finance Committee minutes indicating Councilor Sprague, who also is a member of the Finance Committee, recused himself from discussions and votes where Dale R. Sprague Construction Co.; Inc, was a bidder.

Complainant Timothy Cournoyer was asked if he had any comments to add to the discussion. Mr. Cournoyer expressed that he believes regardless of ninety (90) day time limits and Councilor Sprague recusing himself from discussions, it is wrong for a City Councilor to bid on city projects. He believes it results in a negative image for the community and urged the commission to look at the big picture regarding the situation. Chairperson Marsh stated that as a citizen he could potentially agree about the negative perceptions of elected officials bidding on city projects. However, he believes the Ethics Commission needs to be technical and focus on the commission's charge according to Article VI Code of Conduct in the City Charter. Marsh expressed his belief that city councilors bidding on city projects is a public issue that will result in a public judgment. It is the charge of the Ethics Commission to decide if Councilor Sprague abided by the code of conduct article, including the conflict of interest section.

Commissioner DeSantis questioned Mr. Cournoyer allegedly observing Councilor Sprague work alongside city workers. Mr. DeSantis shared his belief that the complaint without confirmation from city employees involved results in rumors and hearsay. Mr. Cournoyer expressed his belief that city workers would be hesitant to come forward due to Councilor Sprague's position as a city councilor.

Commissioner DeSantis shared his belief that the City Manager should have prevented Councilor Sprague from bidding on city projects. Chairperson Marsh stated he believes the onus is on the city councilor, as the City Manager can only advise. Commission Joyal expressed similar thoughts as Commissioner DeSantis and expressed concerns with what he observed in city documents provided and city government operations. Commissioner Marquis agreed and stated he believes the complaint is more of an internal management issue. Marsh stated he believes individual city councilors make the final decision regarding his/her own actions and the Ethics Commission's focus must be the City Charter's Code of Conduct article. Marsh believes the commissions charge is not to solely investigate the city's financial management operations.

Chairperson Marsh stated the Article and section indicated in the complaint to meet the ninety (90) day requirement was Article IV Section 4.6 regarding City Manager Non-Interference:

“Except for the purpose of inquiries and investigations, the Council or its members shall deal with City Officers and employees who are subject to the direction and supervision of the Manager solely through the Manager, and neither the Council nor its members shall give orders to any such officer or employee either publicly or privately.”

Chairperson Marsh also indicated Article VI Section 6.13 (D) restricts the Ethics Commission to only review alleged violations of Article VI Code of Conduct of Public Officials:

“The Ethics Commission will only review complaints based on alleged violations of this Article.”

Karyn Forbes from the law office of Shaheen and Gordon P.A, representing Councilor Sprague, spoke on his behalf. Attorney Forbes stated, “You as a community adopted an ordinance that was put before a vote. There were probably public hearings about it, there may have been public discussions.” Forbes also said the City Charter does not disallow city councilors from bidding on projects, providing they recuse themselves and that Ethics Commission members have acknowledged Mr. Sprague complied with the recusal requirement. Forbes also referred to Chairperson Marsh's statement that the City Charter Article indicated to meet the ninety (90) day time limit was outside of the Code of Conduct Article the Ethics Commission is charged to review.

Commissioner Joyal expressed his belief that the people formed the Ethics Commission to investigate what the complainant alleged. He also believes that questions and concerns shared regarding financial documents provided by city government should be reviewed more thoroughly.

Decision:

Commissioner DeSantis motioned and Commissioner Richardson seconded to dismiss the ethics complaint filed against Councilor Dale Sprague, as the article and section referenced in the complaint to meet the ninety (90) day requirement was Article IV Section 4.6 regarding City Manager Non-Interference and Article VI Section 6.13 (D) restricts the Ethics Commission to only review alleged violations of Article VI Code of Conduct of Public Officials.

The motion passed 4 to 1. Commissioner Joyal voting in the negative.

Future Agenda Items

To be announced

Ethics Complaint Discussion

Adjournment:

There being no further business to come before the Commission, Commissioner Richardson motioned to adjourn and seconded by Commissioner Joyal. The vote passed unanimously at 7:45 P.M.

Future Meeting Date(s):

To be announced.

Respectfully Submitted,

Todd M. Marsh, Ethics Commission Chairperson

c: City Clerk
City Council
Mayor
City Manager