

**Town of Raymond
Ethics Committee Meeting
August 14th, 2007
High School Media Center
Approved Minutes**

I. 6:30pm Call to Order

Chairman Pam Turcotte called to order a meeting of the Raymond Ethics Committee on Tuesday, August 14th, 2007, at 6:30pm, in the High School Media Center.

Committee members also present:

Frank Bourque
Sandra Ellis
Karen Fullerton
Pat Larney (departed at 8:13pm)

The meeting was filmed by RCTV. The cameraman was Chester Goguen.

II. Pledge of Allegiance

Chairman Turcotte led the attendees in reciting the Pledge of Allegiance.

III. Proof of Posting

The Proof of Posting for tonight's meeting was confirmed at both the High School and the Fire Station by Vice-Chairman Larney.

IV. Pre-Hearing Conference

Chairman Turcotte re-opened the hearing at 6:32pm. She stated that the Ethics Committee had met with Attorney Nicholas Holmes, who is also co-chair of the Dunbarton Ethics Committee. He gave the Raymond Ethics Committee advice on how to properly handle the pre-hearing.

Chairman Turcotte stated that this was a preliminary session to review the complaint with the Complainant. The Public and the Respondent were not to speak. The Committee would then go into deliberative session. Chairman Turcotte asked if any member of the Ethics Committee felt the need to recuse themselves from the Committee at this time. Frank Bourque stated that he was recusing himself, as he had sat on the original planning board case, and left the Committee table to take a seat in the audience, as a citizen of the Town of Raymond.

Chairman Turcotte stated that a number of e-mails had been passed between members of the Ethics Committee, the Complainant, Former Town Manager Rick Bates, and Attorney Holmes, and these are attached. Mr. Bourque stated, as a citizen, that he had not taken part in any of these e-mails.

Complainant Richard Flibotte was accompanied by his attorney, Seth Bostock, who handed a letter to Chairman Turcotte. She stated that it would not be read tonight.

Chairman Turcotte read the complaint verbatim, stopping occasionally to confirm with Complainant Flibotte that her reading was accurate and that he was in agreement with it. At all times he stated that it was and that he was. The complaint is attached.

Complainant Flibotte alleges that Respondent Frank Bishop violated the following sections of the Code of Ethics: A1, A2, A3, A5, A7C, B2, and G.

The Ethics Committee went into Deliberative Session to review each accusation on its merits. Mr. Bourque left the meeting room at this time. They discussed and voted on each accusation. They were not voting on if the accusation was true or false; only if they believed that Complainant Flibotte's report of Respondent Bishop's actions, if true, would constitute a violation of that particular section of the Code.

A1: Public Servants shall avoid conflicts of interest or even the appearance of a conflict of interest.

The Committee could not discern, from the Complaint, that Respondent Bishop had any personal interest in the outcome of the situation. It appeared that it was simply a difference of opinion. The question was called; the vote was four opposed to proceeding with Mr. Bourque recused.

A2: Public Servants shall not appear on behalf of a client, friend or family member before any governmental body of which the public servant is a member or whose members have been appointed by the governmental body of which the public servant is a member.

The Committee opined that, according to the Complaint, Respondent Bishop had appeared on behalf of the petitioners without identifying himself as a Member of the Public. The question was called; the vote was four in favor of proceeding with Mr. Bourque recused.

A3: Public Servants shall not participate in any matter in which s/he, or a member of her or his family, have a personal interest that may directly or indirectly affect or influence the performance or her or his duties. In such instances, the public servant shall recuse herself or himself from discussion and decision-making.

The Committee opined that, according to the Complaint, Respondent Bishop had presented the petition without recusing himself. The question was called; the vote was four in favor of proceeding with Mr. Bourque recused.

A5: No public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege, or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.

The Committee could not discern, from the Complaint, that Respondent Bishop could obtain any personal gain in the outcome of the situation. The question was called; the vote was four opposed to proceeding with Mr. Bourque recused.

A7C: No public servant shall misuse his or her official authority or influence for the purpose of interfering with or affecting the result of an election.

The Committee had too many questions on this issue to make a definitive call, and would like to hear 'both sides of the story'. The question was called; the vote was four in favor of proceeding with Mr. Bourque recused.

B2: Public servants have a duty to recuse themselves from participating in specific action or discussion due to a conflict of interest.

Public Servants who have been recused may remain in the hearing room for the public input portion of the hearing and shall seat themselves with the other members of the public who are present. When recused, the recused person shall not participate in further discussions, unless s/he clearly states for the record that s/he is doing so only as general member of the public. The recused person shall not be present in the hearing room once the public input portion of the meeting is closed and the deliberation and voting process begins.

Except as otherwise provided by state law, in the event a board member feels that a member has a conflict of interest, the board may take a non-binding vote to request recusal by that member. Such action may only be initiated by a member of the sitting board.

Not only does a public servant have a duty to recuse himself or herself as outlined in the section above, a public servant must recuse himself or herself in a quasi-judicial action if he or she would not be qualified to sit as a juror in that case.

For example, jurors are not qualified to sit in a case if they have advised or assisted either party in a matter being decided, are prejudiced to any degree regarding the pending matter, or believe they cannot for any reason be totally fair and impartial. As a representative of the Town of Raymond, you are expected to hold yourself to this same standard.

The Committee opined that, according to the Complaint, Respondent Bishop had not recused himself, nor identified himself as a Member of the Public when presenting the petition, and he should have. Whereas recusal is very important; Vice-Chairman Larney reminded the Committee that there was no obligation to recuse oneself, merely a duty. The Committee would again like to hear 'both sides of the story'. The question was called; the vote was four in favor of proceeding with Mr. Bourque recused.

G: Each public servant should endeavor to deal fairly with members of the public, suppliers and fellow public servants and may not be influenced by such person's work for or gifts made to the Town. None should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair-

dealing practice.

Public servants shall in the course of their public duties afford equal opportunity to everyone, regardless of age, sex, race, color, marital status, physical or mental disability, religious creed, national origin or sexual orientation.

The Committee was unclear on the origin of the petition and who exactly had initiated it. They would like to hear 'both sides of the story'. The question was called; the vote was four in favor of proceeding with Mr. Bourque recused.

Deliberative session being over, Chairman Turcotte moved to proceed with the pre-hearing; Vice-Chairman Larney seconded the motion. The vote was four in favor with Mr. Bourque recused; so moved.

Chairman Turcotte read the hearing rules. Attorney Rob Ciandella was identified as Respondent Bishop's spokesperson; Complainant Flibotte reserves the right to bring counsel.

Chairman Turcotte closed the pre-hearing at 7:15pm. Respondent Bishop's personal attorney, Anthony Gifruscia, departed the meeting at this time.

Complainant Flibotte at that point stated that he wanted some questions answered about the presence of Attorney Ciandella. Chairman Turcotte stated that the Town Manager had told her that Attorney Ciandella was present as there had been a threat of litigation against the Town by Complainant Flibotte. Complainant Flibotte stated that this was not so. He stated that any suit would be against Respondent Bishop personally, not the Town. Selectman Jack Barnes then stated that Complainant Flibotte's attorney had sent a letter to the Town, threatening legal suit. Complainant Flibotte again stated that the action he was taking was a civil action against Respondent Bishop personally. Attorney Bostock stated that he had written the letter in question and that there was no threat of litigation against the Town.

Attorney Ciandella stated that he was not there to represent Respondent Bishop personally, but the Town of Raymond. He was there to represent Respondent Bishop in his capacity as a Selectman of the Town of Raymond. He stated that this is a policy-driven complaint.

Chairman Turcotte stated that it would be the role of the Ethics Committee to determine whether it was a personal issue or a policy issue.

Attorney Bostock stated that the Code of Ethics was meant to be fair to all, and that having Town Counsel represent Complainant Bishop was unfair to Complainant Flibotte and undermined the process. Attorney Ciandella stated that his presence was justified.

Mrs. Joyce Wood stated that she had been on the Code of Ethics drafting committee, and that they had never expected that Town Counsel or any counsel would be present at hearings. She does not think that the Town's best interest is served by having attorneys present. It puts Complainant Flibotte at a great disadvantage, and questioned why, if attorneys are involved, hearings are needed at all.

Complainant Flibotte asked why the Ethics Committee did not have their own attorney present. Chairman Turcotte asked Respondent Bishop if he was willing to proceed without Counsel; he stated that he was not.

Ms. Fullerton stated that she would like to have all written evidence in hand to review before the hearing takes place. Chairman Turcotte will talk to Interim Town Manager Farrell about the Town Counsel situation. Selectman Bob Carlberg criticized the Committee for allowing this discussion to take place at all.

After some discussion about time needed to prepare and various conflicts, the hearing was set for Tuesday, October 9th, at 6:30pm.

Mr. Bourque returned to the Committee at this time.

V. Approval of Minutes

July 10, 2007: Mr. Bourque asked why the minutes included the names of the public in attendance. The Recording Secretary stated that she considered this normal procedure in minute taking, but that it hadn't come up previously because there are normally no members of the public in attendance at Ethics Committee meetings. Gretchen Gott stated that she believed that members of the public who attend and do not speak should be allowed to remain anonymous. It was agreed that that information will be deleted from the July 10th minutes, and not be included in the future. Mr. Bourque moved to accept the minutes as amended; Mrs. Ellis seconded the motion. The vote was three in favor with Vice-Chairman Larney and Ms. Fullerton abstaining due to absence from the referenced meeting; so moved.

VI. Old Business

Mr. Bourque ran through the latest version of the Ethics Training presentation. Some minor edits were made. A discussion followed of useful examples or scenarios to add. Ms. Gott suggested that the Committee could pull details on some inquiries that the Committee had received in the past and use versions of those questions as scenarios.

Training sessions need to be scheduled - two evening sessions for Boards, two daytime sessions for Town Employees, and one session for the Police. Chairman Turcotte will send an email to April for distribution. The first evening session will be on September 25th; Mrs. Ellis will talk to Interim Town Manager Farrell about the daytime sessions; Chairman Turcotte will talk to Police Chief David Salois about the Police session.

VII. New Business

Mrs. Ellis asked if any member of the Committee was aware if anywhere in the Code of Ethics there was any mention of complainants or respondents having counsel of any sort. It was agreed that the only reference to counsel came in the forms, which had been developed by the Committee themselves rather than being voted on by the Town of Raymond. Mrs. Ellis believes that in the

future perhaps the Committee should considering removing that reference. Ms. Gott stated that the original intent of the drafting committee was that no counsel would be included. She stated that everyone is entitled to legal counsel, but that in this case it defeats the purpose of the Ethics Committee.

Mr. Bourque recused himself from the Committee at this point to speak as a member of the public. He stated, as a citizen, that he did not recall any contemplation of attorney presence while on the drafting committee. He stated that the drafting committee had decided to leave that up to the Ethics Committee. He stated that all persons had the right to counsel, and that it was improper to change the rules in the middle of this hearing. Mrs. Ellis promptly corrected him and stated that she had in no way had any intent to do that; she was merely asking about the future. Mr. Bourque stated that the Committee was responsible to uphold the Code of Ethics, nothing else, and that if a person wants to retain counsel, it is not the Committee's problem. Chairman Turcotte then asked that the Committee not discuss this matter any further.

VIII. Other Business

A. Future Meeting Dates

The next meeting, on September 11th, 2007, will be a work session to prepare for the training session on September 25th, 2007.

B. Correspondence

No correspondence or calls have been received.

Adjournment

Mrs. Ellis moved to adjourn the meeting; Mr. Bourque seconded the motion. The meeting was adjourned at 8:29pm.

Respectfully Submitted,

Debra H. Doda