

Statement No. 09-01

Date: 6/23/09

Topics: Complaints: Sufficiency: Board of Ethics: Responsibility to Investigate
Complaints

Code Section: Sections 4 and 7

Statement of Facts:

An anonymous letter dated June 5, 2009 was received by the Chair of the Board of Ethics on June 18th. The letter was addressed to Board c/o the Town Attorney. This is the mail address provided on the Town website to which complaints and requests for Advisory Opinions are to be sent. The letter apparently did not arrive at the Department of Law in an envelope marked “Confidential – To be delivered unopened to the Chairman of the Greenwich Board of Ethics” as the web site suggests for complaints, as it had been opened, date stamped by the Department of Law, and forwarded to the Chair by regular mail in an envelope bearing the return address of the Office of the Selectmen. The Chair immediately forwarded the letter to all the other members of the Board via fax. (It is noted that the Town web site also provides the option of communicating directly with the members of the Board via fax on the Board of Ethics Hot Line.)

Attached to the letter was an undated two and one half page letter to the RTM from the Planning and Zoning Commission (the “Commission”) and the first page of a memorandum to RTM members from the Director of Planning and Zoning, dated June 4th, 2009, which contained the penciled notation “Note: Several more pages were sent with this”. The attachments explained the position of the Commission and the Town Planner on the Plan of Conservation and Development, which was approved by the RTM on June 8th.

The anonymous letter stated that the attachments had been sent to the RTM by the Commission “in an attempt ‘to exert undue influence to vote on such action’” and suggested that this was a violation of Section 4 of the Code of Ethics. The letter estimated that the cost of postage alone for the mailing was \$241.55 and stated the opinion that the materials sent were unnecessary because the Commission had held 23 hearings on the matter and that the members of the RTM “know that the...[Commission]...is in favor of their version”.

The letter continued by charging the members of the Commission with “stepping outside their bounds to influence the vote” and asked “for a hearing for the removal from office for the main perpetrators” ending by thanking the Board for its “consideration of this violation”.

Questions Presented:

Is the letter a complaint that is required to be investigated by the Board under Section 7 of the Code of Ethics?

Discussion and Conclusion:

Section 7 of the Code of Ethics provides that:

The Board of Ethics shall receive all complaints of violations of this Article, shall investigate the same and...shall make such findings and determinations as it may deem appropriate in each case.”

Accordingly, if the Board were to find that the anonymous June 5th letter were a complaint it would be required to investigate whether a violation of the Code has occurred.

Neither the Code nor the Board of Ethics Statement of Procedures requires a complaint to be in writing or in any particular form or that the identity of the complainant is disclosed. However, the Board has provided a suggested form for use in connection with complaints that includes the following instructions:

If possible, please include the name and position of the Town Officer(s) involved and give the details of any votes, actions or transactions involved *and their financial interest in the matter or thing of value accepted by the Town Officer which might influence their behavior.* (Emphasis supplied.)

It is noted that the anonymous letter states the opinion that there “would seem to be” a violation of Section 4 of the Code and thanks the Board for “consideration of this violation”. But it specifically charges the members of the Commission only with “stepping outside their bounds by trying to influence the vote” and asks the Board for a “hearing for the removal from office of the main perpetrators”.

The Board has no independent authority to remove Town Officers from office. Although it can recommend that such action be taken by the proper Town authorities, the Board’s specific responsibility is to investigate complaints of violations of the Code and “make such findings and determinations “as it may deem appropriate in each case.” This requirement clearly indicates that the focus of the investigation should be on each of the Town Officers involved in a complaint, rather than considerations of actions taken by an entire commission within their authority and in accordance with proper procedures.

The letter does not identify any particular member of the Commission as having initiated the mailing of the information to the RTM members. Nor does it indicate that the Commission as a whole initiated the mailing. Rather it is suggested by the date of the letter and the date of the Town Planner’s memorandum that the information was disseminated to the RTM with the memorandum of the Town Planner providing an explanation of the position of the Department of Planning and Zoning with regard to the

Plan of Conservation and Development that the RTM members were being asked to approve.

In addition, the letter does not provide any indication of a substantial personal financial interest that any of the members of the Commission had in the matter that was not common to the interests of the other citizens of the Town, as would be required for a violation of the Code to exist. The naming of all the members of the Board in the letter itself suggests that the interests they are serving are common to all the citizens of the Town, rather than unique to each of the particular members. Rather, the author of the anonymous letter seems to believe that any effort on behalf of the Commissioners to communicate their collective views on the Plan of Conservation and Development to the members of the RTM oversteps their ethical obligations because they are advocating a particular point of view. This curious view of the political process is not, in the judgment of the Board, reflected in the Code of Ethics.

The Board does not discourage the filing of anonymous complaints and has indicated that it will take steps to protect the identity of individual complainants who wish to remain anonymous. However, the Board has also noted that persons who wish to file anonymous complaints deprive the Board of the ability to follow up with them to determine the nature of the filing, clarify their intentions or ask them to supply essential missing information.

In the current instance, the Board can only conclude that the individual sending the letter is asking the Board to hold a hearing on a matter that is outside its jurisdiction: the removal of the members of the Commission from office. The Board is unable to accommodate this request.

In the context of an anonymous request, while the Board will read the allegations made in the most favorable light to the sender, it cannot initiate an investigation where no violation of the Code appears on the face of the communication, as is the case with the current letter.

Nothing will prevent the individual sending this letter, if he or she so chooses, from communicating with the Board further, anonymously or otherwise. If as a result of such further communications, circumstances are brought to the attention of the Board that indicate specific, substantial and personal financial interests of the individual members of the Board in the subject matters contained in the materials sent to the RTM members and suggest that the individuals with such interests were personally responsible for the mailing of the information to the RTM members, the Board will have the information necessary to form a complaint that can be investigated further.