

Town Attorney Tina Hawthorne provided the following update on the new Town of West Seneca Ethics Code:

- The new Ethics Code has been turned into the State
- West Seneca Town Clerk Kobler filed the Code, as required
- New West Seneca Town Supervisor Gary Dickson desires to make additional amendments. At this point, Town Attorney Hawthorne does not know what these amendments are. They have not been discussed with her in detail, yet.

Town Attorney Hawthorne brought up the question of whether or not the Town Code will get "rolled out" in its current form, and then "re-rolled out" once it is amended. The code was approved by the West Seneca Town Board on December 16th, 2019.

Deputy Town Attorney Jon Minear presented the following suggestions from Supervisor Dickson:

- Annual trainings for every employee
- Instead of having each individual Town Board Member appoint/select one person, the Town Board should vote on appointees as a whole. For example: If an individual wants to be on a board, he/she should submit a resume, be interviewed, and then voted on by the board.
- Version of an "Ethics Hotline". For example: If someone goes to lunch with a contractor, there would be a legal advisor available who could answer a question.
- Town Attorney nor the Town Clerk should not be ex-officio members
- Question: Should everything discussed in executive session be confidential?

Discussion regarding third point - "*Ethics Hotline*":

The Ethics Board felt this idea sounds like a 24 hour on-call position, which would put the Town Attorney or Deputy Town Attorney in a conflicting position (if one of them were to assume this role). The Ethics Board also unanimously felt like it would be an unreasonable expensive to the town to pay an attorney for this kind of on-call service. Lastly, they agreed that if an individual has any legal questions regarding a contract, they should not pursue the matter until they have obtained answers to their legal questions.

Discussion regarding the fourth point - *the Town Attorney or the Town Clerk should not be ex-officio members* :

Vice Chairperson Montgomery said the Ethics Board needs the knowledge of the Town Attorney and Town Clerk. Ms. Funk said the Ethics Board can still consult the Town Attorney and Town Clerk, even if they were removed from their role as non-voting members. However, Chairperson Carpenter said that while that is true, it may slow

down the work of the Ethics Board. Ms. Funk said she will research what other towns do.

Discussion regarding the fifth point - *Should everything discussed in executive session be confidential?* :

Deputy Town Attorney Minear said he discussed the topic of Whistle Blowers with Supervisor Dickson. He mentioned to Supervisor Dickson that everything is in confidence so people feel they are able to come forward, without receiving any unnecessary backlash. Deputy Town Attorney Minear said that Supervisor Dickson understands. Chairperson Carpenter added that the Ethics Board has only ever gone into Executive Session to discuss a confidential investigation or pending case.

Secretary Amelia Greenan said that before former Town Clerk Felser left, she explained that a motion is the only record required during an executive session.

Ms. Funk suggested the Ethics Board invite Supervisor Dickson to the next Ethics Board Meeting. Chairperson Carpenter will invite Supervisor Dickson to the next Ethics Board Meeting to share his wishes and concerns regarding the Ethics Code, as well as his thoughts about the future of the Town of West Seneca. Vice Chairperson Montgomery suggested inviting all of the Town Board Members to different Ethics Board Meetings in the future. Chairperson Carpenter said this is definitely something we can do.

Town Attorney Hawthorne gave an overview of changes to the Ethics Code:

- Under Penalties, Section #4 was moved from 13-4 to a Code of Conduct under 13-30 where it says, all town board members, officials, officers, employees, volunteers, etc. will cooperate with any investigation by the Board of Ethics and that reasonable cooperation shall include by way of an example, but not limited to; participating in investigatory interviews, producing documents or other information in their possession or control, appearing at scheduled meetings, giving testimony. Employees represented by a union will have the right to their union representative for any of the investigatory interviews and to seek the advice of their union representative prior to appearing before or providing information to the board.

Town Attorney Hawthorne said that essentially, now as a town employee under the Code of Ethics, you have the affirmative obligation, to cooperate with the process of your investigation. If you do not, and if you have violated the code, you can be penalized in the ways set forth under the penalties. Whereas before, it was just provided as an option under the penalties section if you did not provide a certain amount of cooperation. Now it is a specific Code of Conduct.

The Ethics Board can advise the town about an ethics violation and then recommend a penalty. It is then up to the Town Board to make a decision.

Discussion took place on what would happen if someone did not comply with an Ethics Investigation. Town Attorney Hawthorne and Deputy Town Attorney Minear will do more research before the next meeting to have a more clear explanation. Ms. Funk made the point that the Ethics Board has made it clear that even if you have not acknowledged the Ethics Code, you must abide by it.

Chairperson Carpenter referenced a police issue and asked how that situation is handled. Town Attorney Hawthorne explained that it is an internal investigation. She has had no conversation with Chief of Police about it, but she knows that H.R. is not involved either. She added that this is not a-typical because the police have their own internal process for these types of issues. Therefore, they do not always reach outside of their department for personnel issues.

Vice Chairperson Montgomery asked how an Ethics Board Member would make an Ethics Complaint about an individual. Town Attorney Hawthorne explained that if an Ethics Board Member had first-hand knowledge of a violation against the Ethics Code, the Ethics Board Member would have to file the case and then recuse himself/herself.

Ms. Funk was looking for clarification on the code: She explained that the Ethics Code was approved and filed on December 16th. If someone files a complaint about something that happened prior to effective date of the new code, the Ethics Board has to abide by the code that was in effect on the date of that complaint. Deputy Town Attorney Minear disagreed with Ms. Funk's statement and said the Ethics Board would have to use the existing code in that scenario. He further explained that the Ethics Law in place can be read retroactively because it is not a criminal law. He continued to explain that the only laws that cannot be applied retroactively are criminal laws because it is in violation of the ex post facto law of the constitution.

Ms. Funk brought this up because Ms. Funk, Chairperson Carpenter, and Vice Chairperson Carpenter were told that an individual was going to refile their complaint under the new code.

There was some deliberation between Town Attorney Hawthorne and Deputy Town Attorney Minear.

Deputy Town Attorney Minear explained "res judicata" which is "claim preclusion", which means you cannot bring a claim once you have already litigated a specific claim. There is also "issue preclusion", which is if there is another matter between similar parties, but if the identical issue was raised, you can't subsequently raise it again. It has already been determined. Deputy Town Attorney Minear also explained that in an instance when the Ethics Board cannot render a specific finding that an individual

violated the code, that does not mean that it is not a final determination from the Ethics Board.

Town Attorney Hawthorne and Deputy Town Attorney Minear will conduct further research on the matter.

Chairperson Carpenter began the discussion on the annual two hour ethics board training that the Ethics Board Members are required to take part in. Vice Chairperson Montgomery suggested that the Ethics Board attend a class. He volunteered to look into some options. Ms. Funk suggested that the Ethics Board come up with a couple of options for the group in order to fulfill this requirement.

Chairperson Carpenter suggested putting the Ethics Complaint Form and the Whistle Blower Policy and phone number on the Town of West Seneca website, under the Ethics Board page. Completed Ethics Complaint Forms will be sent to Deputy Town Attorney Minear. The Ethics Board will also need to speak to H.R. regarding the disbursement of the Disclosure Form.

Ms. Funk began a discussion specifically regarding the Disclosure Statements under the new code, which a required to be filled out and turned into the Town Clerk by March 31st. Chairperson Carpenter will begin to create a list of the individuals who need to receive the Disclosure Form and then send it to the Ethics Board for review and discussion.

Deputy Town Attorney Minear found clarity on a previously discussed topic of whether or not an individual can submit an Ethics Complaint using the new code on a complaint that took place before the new code was passed. He concluded that ex post facto is only applicable to criminal offenses. An individual can submit a complaint under the new code for a complaint that took place before the code went into effect. However, an individual cannot resubmit a complaint, because the determination that has already been made is binding.

Ms. Funk continued the discussion on Disclosure Statements, specifically regarding the Disclosure Statement for Independent Contractors. She suggested putting together a memo for the Department Heads that explains the requirement by the Ethics Code for submitting a Disclosure Statement for Independent Contractors. Chairperson Carpenter agreed and suggested speaking with Town Clerk Amy Kobler about this matter. Deputy Town Attorney Minear said that all contracts go through Town Attorney Hawthorne.

Deputy Town Attorney Minear suggested an attendance policy for meetings. For example, if an individual misses x number of Ethics Board Meetings, they will be removed from the Ethics Board. Ms. Funk said currently the Ethics Board currently states, "a board member can be removed for cause". Deputy Town Attorney Minear said that is enough. Vice Chairperson Montgomery asked, "Would we advise the town

board that a member has not been attending and we feel they should be removed, and then we would let the town board go from there?" Deputy Town Attorney Minear confirmed that is what would take place. For the organizational meetings of the Planning and Zoning Board, Town Attorney Hawthorne explained that three missed meetings could be reason for removal from the board.

Chairperson Carpenter asked if there is any reason for the Ethics Board to meet if they do not have cases or any other matters to discuss. Deputy Town Attorney Minear said that the original plan was to meet quarterly. Chairperson Carpenter said the Ethics Board will keep the scheduled monthly meetings but will cancel them in advance if there is no need to meet. Secretary Greenan reminded the Ethics Board that the meetings for the rest of 2020 will be held in the Large Conference Room at 6:00pm in the West Seneca Community Center.

Chairperson Carpenter passed out an Ethics Packet from Santa Clara, California as an example of how that area presents "ethics".

Ms. Funk lead a discussion on how to best distribute the ethics code. The Ethics Board made a statement that the Ethics Code would be made available annually. Chairperson Carpenter suggested reaching out to the Human Resources Department to see if they have any plans to distribute the Ethics Code or ideas on how to distribute.

Chairperson Carpenter will reach out to the Town Human Resources Department, invite Supervisor Gary Dickson and create a list of individuals who need to receive the Disclosure Form.

Students present received signatures for their school's class requirements.

ADJOURNMENT

Motion by Ms. Funk, seconded by Mr. Montgomery to adjourn the meeting at 7:06 p.m.

Ayes: All

Noes: None

Motion Carried



Amelia S. Greenan
Secretary to the Ethics Board