

**TOWN OF HUDSON**  
Code of Ethics Committee  
7:00 PM  
March 22, 2022  
Minutes

**Call to Order:** The meeting was called to order by Vice Chairman Todd Terrien at 7:23 PM in the Buxton Meeting Room at Town Hall.

**Pledge of Allegiance:** The pledge of allegiance was led by Michael MacDonald.

**Roll Call:** Present: Todd Terrien; Michael MacDonald, Heather Smalley and Robert Wherry. Of note, Chairwoman Kim Rice recused herself from this meeting due to a conflict of interest with the complaint that the committee was meeting about.

**Old Business:**

Approval of Minutes for Code of Ethics Meeting from February 15, 2022.  
No feedback from board members.

**Motion by Ms. Smalley, seconded by Mr. MacDonald, to approve the meeting minutes from February 15, 2022. The motion passed 4-0.**

**New Business:**

Ethics Complaints Review against Selectman Gagnon (Ulery)

Vice Chairman Terrien: We do have a complaint from Representative Ulery against Selectman Gagnon and the subject of the petition is malicious slander by Selectman Gagnon, false statements made public and intimidation of a planning board member, all by Selectman Gagnon.

Mr. MacDonald: After looking through the complaint I think there is at least a valid argument for discussion so I will make a motion to accept the complaint for discussion.

**Motion by Mr. MacDonald, seconded by Mr. Terrien, to accept the complaint against Selectman Gagnon for review. The motion passed 4-0.**

Mr. MacDonald: I think off the bat we can dismiss the defamation, intimidation, and that stuff. That does not fall within the purview of the Code of Ethics, there are no Code of Ethics that cover those types of activities. We can probably throw that out if everyone agrees.

All members: Agreed

Mr. MacDonald: I think the only aspect that warrants discussion is whether Selectman Gagnon was representing himself as a Selectman or using his authority as a Selectman in a matter that was not Selectman business.

Ms. Smalley: From my perspective it's negated by, and I quote, "I should clearly state that the following comments and thoughts are on my own accord, and I am not speaking for the board as a whole". I think that is clearly getting him past ethics code 53-4 D.

Mr. MacDonald: For me, I would agree if the only aspects in which he represented himself as a Selectman were that introduction paragraph and the email signature. For me, the email signature is probably always there, he probably doesn't think twice about it. The part that I struggle with is saying you are coming at this from your own accord and then in the third full paragraph, towards the end it says, "I can confidently say that everyone that knows me and voted for me as a Hudson Selectman clearly understands my campaign platforms. My election alone shows the Hudson voters are concerned about the character of their town due to the overdevelopment and lack of logical planning". For me when he invokes his election as a Selectman as why he is the authority over Representative Ulery, you are then invoking your authority as a Selectman and why he is the one they should be listening to. I have a hard time squaring saying you are coming at this on your own accord and then invoking your election as a Selectman.

Mr. Terrien: For myself, disregarding that I feel the letter is disrespectful to two sitting representatives. I do think in the first paragraph, referencing he is a current sitting Selectman, the lines Mr. MacDonald referenced and the email signature. You can't have it both ways, saying it's on your own accord and referencing yourself as a Selectman.

Mr. Wherry: I am weighing two things, is the intent clearly acting on behalf of the Board of Selectman, which would be a violation or in the code where it says Selectman can appear on behalf of constituents, is he acting in that manner. I'm not convinced he firmly makes a statement that he is representing the board, and he does have a right to represent his constituents.

Mr. MacDonald: I have a hard time with the representing constituents view and then giving him the benefit of the doubt for the line about speaking on his own accord. You're in conflict by saying both things, he already said he was speaking on his own accord, and I do think he invokes the representing constituents when he references his election, but the problem is you have statements throughout the letter that conflict positions. With respect to code 53-4 D, my problem with the way it is worded is it does not say representing the Selectman as a whole. So could you make the argument that putting yourself out there as a Selectman without board approval is enough?

Mr. Terrien: I think you could and if I take part of that code, he signs the email Brett Gagnon, Hudson NH Selectman.

Mr. MacDonald: It's a tough one, there is nothing clear here. There are so many things that conflict with one another. There is holding yourself out there as a Selectman, then there is invoking your election which could be representing your constituents, but then there is clearly you are coming at this as a private person. To me, the of my own accord line was cover. If he only referenced the things he did personally in the letter, I wouldn't have thought much of it, but it was the end of the third paragraph that stood out to me. When he invokes his election, he is saying, this is why I was elected, why I am the authority on this matter.

Ms. Smalley: From my perspective this is not black and white, and for me if there is any reasonable doubt, that's where I am at. I just don't think it is clearly a violation of the code of ethics, but because it is not clear, it's not a violation.

Mr. Wherry: If he had made a declarative statement, saying the board feels this way, or we have discussed it and this is what we feel. If he had represented it in that manner, it would be a lot clearer. I agree one would prefer he not comingle these different aspects, Selectman, representing constituents and his own opinion, but he doesn't clearly say he is representing the Selectman so that to me is the out.

Ms. Smalley: I would say, the disparaging remarks, it's disgraceful, it's not flattering for any of our representatives, so I would encourage everybody to think before they type.

Mr. Terrien: I feel like I am pushed where there is a legitimate question here, to hold a public meeting to investigate this further and hear from both sides.

Mr. MacDonald: I agree, I would love it all to be more clear and I think some are saying it's not clear so there is no violation and I feel I take the opposite view, because it's not clear I'd like to look into it more. Sitting in this position, I have enough of a concern with the comingling of hats he has in the letter, where for me I feel I am doing a disservice to not say we need to look into this more. For me, the personal perspective line was just to give himself cover, it's no different than saying with all due respect then saying something disrespectful. The line was his way to try and not get in trouble.

Ms. Smalley: He does come at it from a personal perspective many times in the letter, referencing the things he personally has done.

Mr. MacDonald: I don't think there is much else to investigate with this, it would be more to give Selectman Gagnon a chance to come down and defend himself if we were to accept the complaint. For me, if you are going to say you're coming at this from a personal perspective, you need to do that throughout. If we accept, we would give him a chance to come down and maybe explain some of the confusion with the letter.

Ms. Smalley: So we have had other complaints that are gray and we have dismissed those, so I will make a motion to dismiss without prejudice based on precedent.

**Motion by Ms. Smalley, seconded by Mr. Wherry, to dismiss the complaint without prejudice. The motion deadlocked 2-2.**

Mr. Terrien: We could make a motion just for the record to hold a public hearing.

Mr. Wherry: Are we able to discuss this first? Having the hearing, would it enable the Selectman or other people in town to hear about in what capacities you can act and when. Could it serve an educational purpose?

Mr. MacDonald: I would assume we would, as we did here, we would have to reference the statutes. I think what Mr. Wherry is saying is, as part of the meeting would it serve an educational purpose also.

Mr. Wherry: Right, it would perhaps clarify our jurisdiction a little, and would it clarify to the selectman what they can and cannot do.

Ms. Smalley: We previously had a complaint where we determined it was not a violation but not appropriate and we sent a letter. Perhaps a compromise would be something such as that.

Mr. MacDonald: I am not opposed to going down the route of the letter. I feel strange because on one hand I am saying I feel he may have done something, but on the other I am saying we should let him come down and have a chance to explain himself.

Ms. Smalley: In the other instance we did not do a public hearing.

Mr. MacDonald: Has that been at our disservice though and why we keep getting these gray area complaints? Maybe this is a different direction and some good comes of it.

Ms. Smalley: Since most of the complaints are about the Selectmen, maybe we just send the letter to the Selectmen.

Mr. MacDonald: Possibly because of the topic and the people involved, a public hearing would get some interest.

Ms. Smalley: At some point it might help to invite the Selectmen to one of our meetings to discuss these things.

Mr. Wherry: I would just say, could we send the letter then have a meeting with the Selectmen and say any further matters in that gray area, we will go to a public hearing because we have set boundaries at that time.

Mr. MacDonald: I am not opposed to the letter, I think the public hearing in advance of the letter would still have a benefit. We still haven't voted on the pending motion.

Mr. Wherry: The primary thing I see the hearing doing is providing an educational forum. I don't see it making the situation clearer.

Mr. MacDonald: It might not, but maybe hearing from the Selectman helps us understand his intent with the letter.

Mr. Terrien: I guess I am going back to the letter from Representative Ulery, I'd still like to hear from him and have him expand on the complaint.

**Motion by Mr. Terrien, seconded by Mr. MacDonald, to proceed with a public hearing. The motion deadlocked 2-2.**

Mr. Wherry: I'd like to make a motion that we craft the letter then invite the Selectmen to discuss the letter.

Mr. MacDonald: I think we were ultimately landing on sending the letter from our discussion. The meeting is interesting, because I don't think we can compel the board to come, but having them come down and tell them to be more aware of what they say could help. I do think because of their positions, they inherently are the targets of these complaints.

Ms. Smalley: I think we should take a recess.

**Motion by Mr. MacDonald, seconded by Mr. Terrien to take a recess. The motion passed 4-0.**

Mr. MacDonald: We just had to consult with legal counsel on some procedural things. We weren't clear on the order of how this should be done. After the discussion, I will make a motion to accept the complaint on the limited basis of the review of the complaint alleging that Selectman Gagnon was acting in his capacity as a Selectman.

**Motion by Mr. MacDonald, seconded by Ms. Smalley, to accept the complaint on the limited scope. The motion passed 4-0.**

Mr. MacDonald: I guess we then acknowledge the prior votes in which we reached an impasse at dismissing or holding a public meeting. Right before recess Mr. Wherry had made a motion about sending a letter, so I suppose we vote on that.

Mr. Wherry: I would make a motion that we send a letter to Selectman Gagnon about the concerns we have on the potential violation and ask him to be more careful in his written communications.

Mr. Smalley: And be clear in his communications.

Mr. Wherry: Yes, clear in his communications about what role he is acting as.

**Motion by Mr. Wherry, seconded by Ms. Smalley, to send a letter to the Selectmen concerning this matter. The motion passed 4-0.**

Mr. MacDonald: So I guess we just say in this letter that the board couldn't come to agreement, we deadlocked on whether it was a violation, some felt it was and some felt it wasn't, but remind him to be more clear on what role he is acting in.

Ms. Smalley: I still think we should send another letter to the Board of Selectman letting them know they are often the subjects of these complaints and just provide a copy of the Code of Ethics.

Mr. Wherry: Do we need another motion on the second letter?

Mr. MacDonald: What we could do is try to roll it into one letter and if we feel it is getting too muddy, we could take the second piece, the more general letter to the board and vote on that the next time we meet.

Ms. Smalley: Can we instead make a motion to defer to the attorney as to whether we can put it all in one letter?

**Motion by Ms. Smalley, seconded by Mr. MacDonald, to defer to legal counsel on whether it should be one letter. The motion passed 4-0.**

**Motion by Ms. Smalley, seconded by Mr. Terrien, to adjourn the meeting. The motion passed 4-0.**

Code of Ethics Committee meeting was adjourned at approximately 8:13pm.