

**ETHICS COMMITTEE MINUTES
WEDNESDAY, OCTOBER 31, 2007**

Minutes of the Wednesday, October 31, 2007 Ethics Committee meeting.

At 9:00 a.m. Chair Weiss called the meeting to order.

MEMBERS PRESENT: Chair Weiss, Paul Miller, Kent Peterson, Don Buchanan, John Benz, Supv. Gellerup, Deb Behringer Ad Hoc.

Excused: Harlan Beutler.

OTHERS PRESENT: Attorney Jim Macy, Bill Haag, Marv Wagner Jr., Larry Crawford, Jeff Nett, Everett Eckstein, Donna Kalata, Pat Wolf and Wes Lungwitz.

APPROVAL OF AGENDA: A motion was made by Don Buchanan, seconded by Supv. Gellerup, to approve the agenda. Motion carried.

NEW BUSINESS

Attorney Jim Macy explained the process to be followed for the hearing. Witnesses will be sworn in and exhibits will be marked.

- Exhibit #1 – Ethics Complaint dated September 21, 2007
- Exhibit #2 – Response from Everett Eckstein
- Exhibit #3 – Response from Larry Crawford
- Exhibit #4 – Response from John Benz
- Exhibit #5 – Response from Jeff Nett
- Exhibit #6 – None
- Exhibit #7 – Letter dated 10/10/2007 requesting removal consideration

The Committee discussed the request regarding exclusion from participation, dated 10/10/2007, of persons unable to render an impartial judgment. Attorney Macy recommended that until there is further testimony and background in the matter, he would reserve a ruling on the issue. He asked the Committee members to consider their ability to make an unbiased decision. Attorney Macy indicated that the mere fact of participation with the Town's Association would not exclude a Board member from participation in the hearing. Attorney Macy indicated that after the evidence has been submitted, he would review everything from a legal standpoint to determine if there are any issues. Jeff Nett asked if there were conflicts with his employment with the County and potential for discipline. Attorney Macy indicated that it was too soon to tell.

Attorney Macy continued to describe the procedure. Complainants will proceed first. Individuals will have the opportunity to ask questions. Respondents will be given the same opportunity. The Ethics Committee will follow the Ethics Ordinance procedure. Evidence will be presented in open session. After the evidence has been provided, the Committee would adjourn to Executive Session and only the Committee, with the assistance of legal counsel, would be allowed in the room. The Decision would be in written form. Jurisdictional questions will be deliberated in closed session.

At this point, Bill Haag and Marv Wagner Jr. were sworn in.

Bill Haag referred to his written complaint. The complaint included many attachments. A list of participants

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was included. Bill Haag had transcribed the Waushara County Unit of the Town's Association minutes (9/25/06) into a typed format for ease of reading. The original hand written notes were also provided. The packet of information and the complaint is marked Exhibit #1. Mr. Haag indicated that his concern was that individuals participating in the quarterly Town's Association meeting had acted to spend taxpayer money to influence an election. Attorney Macy requested clarification if this was Waushara County or the Town's Association based on statutory recognition. Mr. Haag indicated that it was a Town's Association meeting, not a County meeting. Mr. Haag indicated that there was no Waushara County budget money involved. He acknowledged that there is a difference between the Town's Association and Waushara County. Mr. Haag stated that his concern is that elected officials at both the Town and County level have an obligation to maintain ethics at all times and there is a fiduciary responsibility. Taxpayer funds were spent, without authorization, to influence an election dealing with the referendum regarding the size of the County Board. A clarification was asked if Mr. Haag was indicating that a County Official could not exercise decision in their representative capacity as a Town elected Official. Mr. Haag explained that he was not suggesting that, he was saying that they had a fiduciary responsibility to the taxpayer that they are supposed to represent. They were spending money through the Town's Association against a referendum without taxpayer authorization. They were not educating taxpayers, they were taking a position to influence an election. Attorney Macy stated that for the sake of the record, the referendum, being referred to, was dealing with the size of the County Board.

The next item in the packet was the Code of Ethics for the County.

The Campaign Finance Report was reviewed. It listed the elected County Officials that supported the vote no campaign. Mr. Haag stated that county elected officials supported, with funds, the vote no campaign as put forth by the Town's Association. A clarification was asked in regards to County money or personal money. Mr. Haag indicated that it was personal money. The reason Mr. Haag added this information was that the Chair of the Ethics Committee funded and supported the funding against the referendum. A clarification was asked if Mr. Haag was suggesting that elected officials could never spend personal money to have a position on a matter of public interest. Mr. Haag said no, he was not. He went on to explain that these people could not have an unbiased judgment in regards to this matter. Attorney Macy asked that in the case of a public concern that would require a vote, why couldn't an elected official have an opinion on a matter of public concern. Mr. Haag stated that they can, but it has impact on their ability to have an unbiased opinion at the hearing today. Attorney Macy again clarified that this would be taken up as a jurisdictional question. Mr. Haag indicated that his concern was the cash from individuals that were not clearly identified. He explained that elected officials can have personal opinions and are able to use their financial resources, just not taxpayer funds. Mr. Haag stated that donations of \$10 or more must be individually listed. Attorney Macy asked him if there was any specific violation under the County ordinance that was violated. Mr. Haag responded that these were campaign issues. Attorney Macy indicated that the focus of the Committee is violations of the County Ethics Code. Campaign financing issues may fall under a different jurisdiction. Mr. Haag stated that the Town's Association appropriated funds to vote no and advertise as such, supported by all the townships, to spend taxpayer money.

The Waushara Town's Association had not filed the proper paperwork with the County until after the Department of Justice had brought it to the attention of the County Clerk. Mr. Haag indicated that the State is reviewing this action. Bill Haag also stated that the Waushara Town's Association members that were involved in the decision making process to spend money on the campaign should be excluded from the Ethics Committee decision.

Attorney Macy acknowledged that there may be multiple issues pending, but for the hearing today, the Committee must restrict their focus to the Waushara County Ethics Ordinance.

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Jeff Nett asked a question of Mr. Haag in regards to the typed roster of individuals in attendance at the 9/25/2006 Town's Association meeting. His concern was his name being identified as Chairman, Town of Wautoma and Lt. Waushara Co. Sheriffs Dept. He stated that he signed in as Chair of the Town of Wautoma. He asked if Mr. Haag was suggesting that he was acting in a capacity as a County employee when he attended the meeting. Mr. Haag stated that this was not his intent. Jeff Nett wanted it on record that he signed the roster as the Chair of the Town of Wautoma only. All the people participating in the Town's meeting were there in the capacity as Town's people.

A request for clarification was raised by Don Buchanan on the complaint and information regarding motion actions. There were two motions in the Town's Association minutes, one dealt with taking some action and the second dealt with the expenditure of funds.

Marv Wagner Jr. requested clarification as to what role Attorney Macy was playing. Attorney Macy explained that he is advising the Committee and representing Waushara County.

Marv Wagner Jr. stated for the record that he objected to Committee members, having involvement in any capacity with the Town's Association and the decision to proceed with the advertising campaign, making a decision on this matter. He felt that even the most upstanding individual would have difficulty remaining unbiased. Attorney Macy explained there is a different standard between judge/jury situations and elected officials sitting on a committee. The Committee would limit their discussion to the complaint and what would fall under the Waushara County Ethics code.

Marv Wagner Jr. stated that the complaint is before the Committee. A group of elected officials tried to influence an election in which they had a direct or indirect stake. He stated that the Wisconsin Counties Association would never try to influence a state referendum.

Attorney Macy asked for clarification on what specific provision of the Ethics Code is being violated. Marv Wagner Jr. explained that he could not say a specific item. He stated that the Code prohibits employees from acting if there is a chance of gain. The person should be recused. Marv Wagner Jr. indicated that he did not see a problem with an individual using personal funds to contribute to a cause. He agreed with the statement that no one acted in an official County capacity in this activity. No County money was used. Mr. Wagner explained that elected officials must be very careful to avoid conflicts of interest. He has never contributed money to take a position. The activity in question was not educational, but intended to sway the public. A policy decision was made at the Town's Association to assess Town's for the cost of the advertising.

Don Buchanan asked Bill Haag and Marv Wagner Jr. if they were involved with the Waushara Taxpayer Alliance. Mr. Wagner and Mr. Haag indicated that they were not involved in that organization and did not contribute any money to that group. Attorney Macy stated that this discussion was not relevant to the topic at hand.

Attorney Macy asked the respondents if they would like to add anything to their written statements. Mr. Wagner requested copies of the respondents' answers.

Jeff Nett explained that two ads were paid for by the Town's Association. At no time did the money come from the Townships. A concerned citizen group had a separate bank account. The Town's Association receives money from vendors and Towns through a dues structure. Once the Town issues a check to the Town's Association, the Town loses control on how the Town's Association uses the funds. Jeff Nett compared this to

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the Town of Wautoma paying Alliant Energy for services. He stated that once the bill is paid, Alliant can use that money for whatever purpose it chooses, even lobbying. The vote no campaign was educational and the group wanted the information to go out as the Town's officials felt it was not in the best interest of the Towns to have a smaller County Board. Mr. Nett explained that the County has a Legislative Committee and this committee takes position on many issues. Mr. Nett stated that he has never been contacted by an investigator from the State Department of Justice, the Elections Board or the District Attorney's office regarding this issue. He said that if this issue were truly under investigation by authorities he would have been contacted as a courtesy to provide a statement. Jeff Nett said that citizens have a right to state their opinions. Individuals should not be allowed to oppress an opposing viewpoint.

Mr. Haag indicated that the minutes of the Town's Association reflect that a \$25 assessment was charged to the Towns to pay for the advertising. Jeff Nett responded that it was his understanding that the Town's Association checking account was sufficiently able to cover the cost of the advertising. Bill Haag and Marv Wagner Jr. felt that the additional assessment was a violation.

Larry Crawford stated the Townships do not have to belong to the Wisconsin Town's Association. Each Township handles their money in the way that seems fit. Waushara County does not belong to the Town's Association. He also indicated that under this complaint, it would restrict Town Board members from voting if they were also County Board members.

John Benz stated that there was no personal gain on anyone's part, no authority was exceeded, no breach of any law, the action was lobbying and disseminating information, there was no conflict of interest and the treasury funds were donated. There were funds from private individuals and vendors. John expressed a concern that not all of the people in attendance at the Town's meeting were identified in the complaint and he felt that there was some picking and choosing as June Roehl and Barb Struzynski were not named in the complaint. Mr. Benz also requested that the cost incurred because of the hearing, be charged back to the complainants.

No other evidence was presented. A motion was made by Don Buchanan, seconded by Supv. Gellerup, to adjourn to Executive Session under 19.85 (1) (H) request for ethics advice for purposes of deliberation and decision regarding ethics complaint. Motion carried.

Roll Call: Ayes – Paul Miller, Kent Peterson, Fred Gellerup, Don Buchanan, Norm Weiss, John Benz
Nays – None.

Attorney Macy thanked everyone for their participation and patience.

Attendees were excused from the room. John Benz recused himself at this point to avoid any appearance of bias. John left the room at 10:26 a.m. The remaining Committee members discussed the merits of the complaint.

A motion was made by Don Buchanan, seconded by Supv. Gellerup, to return to open session. Motion carried.

A motion was made by Don Buchanan, seconded by Paul Miller, to accept the following draft. Motion carried.

**BEFORE THE
WAUSHARA COUNTY ETHICS COMMITTEE**

BACKGROUND

This matter came before the Waushara County Ethics Committee for hearing on October 31, 2007, pursuant to a Complaint filed with the Committee dated September 21, 2007. Complainants were provided an opportunity to testify before the Committee and submit evidence. Respondents were provided an opportunity to ask questions of the Complainants. Upon completion of the Complainants' case, the Respondents were provided an opportunity to testify and submit evidence. The Complainants were provided an opportunity to ask questions of the Respondents. Six exhibits were entered into the record in this matter. A recording was made of the proceeding.

Following a full evidentiary hearing, the Committee entered into deliberations including a review of all evidence submitted at hearing. Upon full deliberation, the Committee rendered its decision as follows.

DECISION

The Committee first considered the participation of the members of the Waushara County Ethics Committee. While this matter is limited to a Complaint under the Waushara County Code of Ethics, and while the presumption is that members are unbiased, John Benz individually elected to recuse himself to avoid an appearance of bias as he was specifically listed as a Respondent in the case.

No other member of the Ethics Committee is listed as a Respondent, nor participated in the Town's meeting under review in either their capacity as a Waushara County elected official or employee and Town's official. All remaining Committee members felt they could make an unbiased decision under the Code and limited to the information set forth in the hearing in this case.

In review of the merits of the Complaint, it is found that no employee or elected official of Waushara County acted in any capacity of the County as it relates to decisions of the Town's Association to advertise a

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political position regarding the size of the Waushara County Board. No County action or County money was involved in the Town's Association decision to advertise a political position regarding the size of the Waushara County Board.

In review of each provision of the Waushara County Code of Ethics, the facts do not establish any violation of the Code and, therefore this matter is dismissed.

In consideration of a request that fees be assessed against the Complainants under the premise that the Complaint was frivolous, that request is denied in that the Ethics Code does not provide for authority for such assessment.

Norm Weiss
Waushara County Chair

Date

There being no further business, the meeting was adjourned.

Respectfully submitted,

Debra S. Behringer
Administrative Coordinator

/dsb