

Minutes of the Special Selectboard Meeting of Wednesday, June 17, 2015 at 6:00 PM

Members present: Linda Cook, Chair; Christopher Ashley; Steve Flanders; Dan Goulet; Mary Layton, Vice-Chair; Neil Fulton, Town Manager and Jonathan Bynum.

Representatives of Vermont League of Cities & Towns: Garrett Baxter (Senior Staff Attorney, Municipal Assistance Center, VLCT), Abby Friedman (Director, Municipal Assistance Center, VLCT).

There were about 21 people in the audience.

Also participating: Watt Alexander, Ernie Ciccotelli, Kris Clement, Rob Gere, Jim Gold, Linda Gray, Brian Livingston, Suzanne Lupien, Arline Rotman

Cook opened the meeting at 6:01 pm.

1. VLCT Workshop—topic is the roles and responsibilities of the Selectboard and Town Manager in the Town Manager form of local government.

Cook related three questions that had been posed to the VLCT by the Selectboard:

- (a) What is the general statutory authority and relationship between the Town Manager and the Selectboard?
- (b) What does VLCT consider best practice for employee performance evaluations?
- (c) What is VLCT's analysis of the Nelson v. St. Johnsbury case?

Cook introduced Abby Friedman, who described the role of the VLCT, and then introduced Garrett Baxter. Baxter said that his presentation was not directed towards Norwich's particular issues, and that he would be unable to answer specific questions pertaining to Norwich.

- (a) What is the general statutory authority and relationship between the Town Manager and the Selectboard?

Baxter explained that Vermont is a Dillon's rule state, meaning that a municipality has only those powers and functions specifically authorized by the Legislature. Sixty-one towns in Vermont have adopted the municipal manager form of government. This change substantially alters the role of the Selectboard, by transferring most of the administrative and managerial functions previously performed by the Selectboard to the Town Manager. This in turn allows the Selectboard to focus primarily on setting policy.

The Town Manager's authority is not delegated by the Selectboard, but rather flows from the Vermont Statutes. As such, the Town Manager has the independent legal authority to follow his/her own judgement, but must be willing to accept the consequences.

At this point, there were various questions from the Selectboard and the audience, some of which Baxter declined to answer. Baxter related that, in a Town Administrator form of government, the authority of the Town Administrator *is* delegated to him/her by the Selectboard, but reiterated that in the Town Manger form, the authority of the Town Manager is derived from State statute.

- (b) What does VLCT consider best practice for employee performance evaluations?

Baxter stated that the VLCT recommends at least annual performance evaluations. These should be documented and signed by the employee to acknowledge receipt. This harmonizes employer/employee expectations, facilitates improvement, assists retention, and helps avoid litigation in case of termination.

(c) What is VLCT's analysis of the Nelson v. St. Johnsbury case?

Baxter explained the legal distinction between an *at-will* and a *for cause* employee. The Vermont Supreme Court ruled in the Nelson case that a Town Manager is a *for cause* employee.

An *at-will* employee may be terminated at any time for any reason, as long as the reason is not unlawful. A *for cause* employee can be terminated only for misconduct or poor performance resulting in a substantial detriment to the employer's interest, and must be afforded due process during termination. What constitutes due process requires a balancing of the interests at stake, but the Supreme Court has recognized three procedures that protect due process—

- (i) Limited pre-termination and more comprehensive post-termination hearings
- (ii) Suspension with pay
- (iii) Suspension without pay

At this point, there were various questions from the Selectboard and the audience, some of which Baxter declined to answer. Ashley asked whether a Selectboard executive session would count as a pre-termination hearing. Baxter said that this question had not been litigated. Gold, Alexander, Clement and Lupien had questions about contracts—whether the Town Manager can be compelled to sign a contract during his/her tenure, and whether having one can turn the Town Manager into an at-will employee. Baxter replied that questions about contracts had not been litigated in the Nelson case, but that in general, a contract must be entered into freely by both parties. Clement suggested that the VLCT study how successful the Town Manager form of government has been. Gere asked whether a Town Manager's refusal to sign a contract during his/her tenure could be acceptable cause for termination. Baxter replied that he didn't see a cause basis for termination in this situation, but that the issue has not been addressed by the Supreme Court.

Cook thanked Baxter and Friedman for coming. Ashley **moved** (2nd Flanders) to adjourn. **Motion passed.** Meeting adjourned at 7:52 pm.

Approved by the Selectboard on July 8, 2015.

Jonathan Bynum

Linda Cook
Selectboard Chair

Next Regular Meeting – June 24, 2015 at 6:30 PM

PLEASE NOTE THAT CATV RECORDS ALL REGULAR MEETINGS OF THE NORWICH SELECTBOARD.