

## Nancy Kramer

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**From:** Stephen Flanders <stephen.n.flanders@gmail.com>  
**Sent:** Thursday, January 07, 2016 1:00 PM  
**To:** Cook Linda; Layton Mary; Ashley Christopher; Goulet Dan  
**Cc:** Nancy Kramer; Neil Fulton  
**Subject:** Attorney opinion and correspondence that has been disclosed to the Valley News – For inclusion as correspondence in the 13 January 2016 packet  
**Attachments:** NOH15-001 OPN Town Manager.pdf; ATT00001.htm; List of Responsive Documents.pdf; ATT00002.htm; Cover Letter.pdf; ATT00003.htm; Copies of Responsive Documents.pdf; ATT00004.htm

To the Norwich Selectboard:

### **This memo contains no confidential material.**

This is to disclose to the public **Selectboard** matters—*which have been transacted without their being included in published packets of the selectboard*—regarding the employment status of the town manager. These include opinions from attorneys on the subject of the Town Manager's contract and attorney-client privilege that were publicly released as a result of the public information request by the *Valley News*.

**Background**—The Minutes of the Special Selectboard Meeting of Wednesday, July 29, 2015 at 6:30 PM include the following action of the board:

3. Project Management (Discussion/Possible Action Item)

(a) Opinion from Paul Gillies. Layton said that she felt the opinion letter from Paul Gillies was unclear, and that she would like a second legal opinion. Cook said that she did not like the apparent misquotation on the second page and also favored a second opinion. Ashley and Flanders thought that the letter was clear, that Gillies had the requisite expertise, and that a second opinion was a waste of money. Ashley had questions about the fees charged by Project Managers. Goulet then **moved** (2nd Layton) to authorize the Chair of the Selectboard to seek a written legal response to the question of 24 VSA §1236(4) in its interpretation. There was discussion of whether the free legal services provided to the Town by PACIF might cover this expense. Goulet's **motion passed 3-2** (yes—Cook, Goulet, Layton; no—Ashley, Flanders).

The resulting opinion from Attorney John Klesch was received without the cloak of attorney-client privilege, was included in the packet of the Minutes of the Selectboard Meeting of Tuesday, November 10, 2015 at 6:30 PM and confirmed the opinion of Attorney Paul Gillies.

**Motion to clarify employment status of town manager**—The Minutes of the Selectboard Meeting of Tuesday, November 10, 2015 at 6:30 PM include the following action of the board:

2. Town Manager Contract (Executive Session May be Required) (Discussion/Possible Action Item). Flanders objected that the questions that appeared on the table for discussion at the meeting had not been included in the Selectboard package, contrary to the rules and practice of the Board. He asked why his memo in the package ("Town Manager Current Terms of Employment") could not be included as part of the information passed to an attorney and received the answer from Cook and Layton, who had developed the questions on the table, that the memo was not in question form and therefore would not be considered. After discussion regarding how the questions were developed, Layton **moved** (2nd Goulet) to authorize the Selectboard Chair to hire Attorney John Klesch to give his legal opinion of Selectboard

questions regarding the Norwich Town Manager's current employment status. **Motion passed 3 to 2** (yes – Cook, Goulet and Layton; no – Ashley and Flanders). Ashley offered an amendment to limit the expense to \$3,000 that received no second.

The board did not request or authorize the chair to have the opinion rendered in a manner such that it would be withheld from both the employee (town manager) and the public.

**Opinion received to clarify employment status of town manager**—The DRAFT Minutes of the Special Selectboard Meeting of Wednesday, December 16, 2015 at 6:30 PM include the following action of the board:

1. Review of Opinions from Attorney Klesch Re: Terms of Employment of Town Manager (Executive Session May be Required). Layton **moved** (2nd Goulet) to find that premature general public knowledge of the confidential attorney-client communications made for the purpose of providing professional legal services to the Selectboard regarding terms of employment of the Town Manager would clearly place the municipality at a substantial disadvantage. Flanders asserted and Ashley agreed that the discussion of the motion did not adequately support the standard of “would clearly place the municipality at a substantial disadvantage,” needed as a finding to justify entering Executive Session. Further discussion ensued. **Motion passed 3 to 2** (yes – Cook, Goulet and Layton; no – Ashley and Flanders). Pursuant to Title 1 VSA § 313(a)(1)(F), Layton **moved** (2nd Goulet) to enter into Executive Session for the purpose of discussing the confidential attorney-client communications having found that premature general public knowledge would clearly place the Selectboard at a substantial disadvantage and invite Attorney John Klesch to join by telephone. **Motion passed 3 to 2** (yes – Cook, Goulet and Layton; no – Ashley and Flanders). Flanders abstained from participating in the Executive Session. The Selectboard moved into Executive Session at 6:54 pm. At 7:47 pm Layton **moved** (2nd Flanders) to move into public session. **Motion passed.**

Pursuant to Title 1 VSA § 313(a)(6), Layton **moved** (2nd Ashley) to enter into Executive Session for the purpose of discussing the John Klesch opinion letter. **Motion passed.** The Selectboard moved into Executive Session at 7:55 pm. At 8:39 pm Layton **moved** (2nd Flanders) to move into public session. **Motion passed.** Layton **moved** (2nd Flanders) to make public from the Town Manager's Office by noon on December 17, 2015 the John Klesch attorney opinion concerning the Norwich Town Manager. **Motion passed 4 to 1** (yes - Ashley, Flanders, Goulet and Layton; no - Cook). Ashley **moved** (2nd Flanders) to authorize the Town Manager to release the documents covered by the public records request when they become available from the attorneys. **Motion passed 4 to 1** (yes - Ashley, Flanders, Goulet and Layton; no - Cook).

Unlike the previous opinion asked of Attorney Klesch, *this opinion was rendered out of the public view*, subject to attorney-client privilege as a result of interactions among SB Chair Cook, Vice-Chair Layton and the attorney.

Consequently, the *Valley News* asked for disclosure of the material under the Public Records Act. This resulted in the chair engaging a second attorney from the same firm, without authorization from the board, to handle the question of disclosure, which normally is handled by the town manager. In the end, the chair was the sole opposing vote against any disclosure of the material received and the correspondence that pertained to the opinion.

I attach the documents that were disclosed to the *Valley News*, so that they may become part of the public record, included in selectboard packet.

Sincerely, Steve F.

Stephen Flanders, Member of the Norwich Selectboard  
317 Hopson Road  
Norwich, Vermont 05055

802-649-1134 (Home)

Any response or reply to this electronic message may be subject to the Vermont Public Records Act. Any views expressed in this e-mail are mine and may not reflect those of the board. Vermont statutes confer no special powers to individual selectboard members. Statutory selectboard powers arise from actions of the body at warned, public meetings with a few exceptions.

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## **CONFIDENTIAL, ATTORNEY-CLIENT PRIVILEGED**

December 10, 2015

Town of Norwich Vermont Selectboard  
300 Main St  
Norwich, VT 05055  
(SENT VIA EMAIL-ONLY TO ALL BOARD MEMBERS)

### RE: Norwich Town Manager – Attorney Opinion

We have been asked by the Town of Norwich Selectboard (“Board”) to provide opinions responding to a series of questions concerning the employment status of the current Norwich Town Manager, Mr. Neil Fulton. In this letter, we first discuss our view of Mr. Fulton’s employment status and the reasons for that view. This discussion will answer many of the Board’s specific questions, but we then list the specific questions below and briefly indicate our answers to each.

This analysis is an attorney-client opinion provided under conditions intended to preserve the privilege against disclosure to anyone other than members of the Selectboard. This privilege belongs to the Board, as agent for the Town, and no individual Selectboard member has a right to disclose this information to any other person without consent of the majority of the Board.

We have reviewed the following items:

1. September 19, 2011 Selectboard Minutes.
2. April 11, 2012 Selectboard Minutes.
3. Former Town Manager (Pete Webster) contract.
4. Citizen email Chris Katucki’s research.
5. Watt Alexander and Chris Katucki’s research.
6. Town of Norwich 2010 Personnel Policy
7. Statements reportedly made at October 28, 2015 Selectboard meeting by Mr. Fulton.
8. March 25, 2015 Minutes.
9. Minutes of Special Selectboard Meeting of January 16, 2013.

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10. Minutes of Selectboard Meeting of November 26, 2013.
11. Minutes of Selectboard Meeting of July 8, 2015.
12. Minutes of Selectboard Meeting of July 29, 2015.
13. Minutes of Selectboard Meeting of October 28, 2015.
14. Proposed Town Manager Employment Agreement submitted by Neil Fulton.
15. Memorandum from Christopher Ashley for inclusion in the 3/25 Selectboard Packet regarding a step increase.

According to minutes, the Board appointed Mr. Fulton as interim town manager on September 19, 2011. The appointment was made “with the same compensation and benefits as provided to the previous town manager in the Fiscal Year 2012 budget and as provided in the previous town manager’s contract except” for three specified modifications to compensation and benefits. Also according to minutes, on April 11, 2012 the Board passed a motion to “appoint Neal Fulton as Town Manager, effective immediately and at will, with the same compensation and benefits now provided as Interim Town Manager with a salary increase ... effective July 1, 2012.” Other than compensation adjustments, we are aware of no actions by the Board since April 11, 2012 which can have possibly altered the terms and conditions of Mr. Fulton’s employment with the Town.

In *Nelson v. Town of Johnsbury Selectboard*, 2015 VT 5, ¶ 11, the Vermont Supreme Court held that whether a town manager is an at-will employee “depends upon the interpretation of 24 V.S.A. § 1233, which provides, in relevant part, that the town manager ‘shall be subject to the direction and supervision and shall hold office at the will of such selectmen, who, by majority vote, may remove him at any time for cause.’” The Court’s decision in *Nelson* makes clear the default condition of a town manager’s employment is that dismissal requires cause. In other words, the statute bestows on an appointed town manager a right in his job which can only be taken away “for cause.”<sup>1</sup> Thus, for a contract to be sufficient to alter this employment status to at-will employment, that contract must effect a waiver of the right to be dismissed only for cause.

Our opinion is that there is no contract of employment between the Town and the current Town Manager, other than as to the compensation and benefits expressly described in the minutes. The minutes are documentary evidence of certain agreed conditions of employment, but the minutes are not a “contract” within the meaning of *Nelson v. Town of Johnsbury Selectboard*, 115 A.3d 423, 431, 2015 VT 5, ¶ 9 (“This question is controlled by 24 V.S.A. § 1233, the statute

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<sup>1</sup> It is inherent in such a right that due process must be observed with respect to any potential termination action.

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providing for termination of a town manager in the absence of a contract between the manager and the town.”).

In the context of bargained labor agreements, “contractual waivers [of bargaining rights] are given ‘such effect as the negotiating history and other surrounding circumstances seem to make appropriate.’” *Local 2787, AFSCME v. City of Montpelier*, 643 A.2d 838, 840, 161 Vt. 567, 568 (1993) (internal case cite omitted). A “contractual waiver of [the] right to have [an] issue bargained [is] effective only on [a] ‘showing of a clear relinquishment of the right which is to be decided on the facts and circumstances surrounding the making of the contract as well as the language of the contract itself.’” *Id.* (internal citation omitted). Though collective bargaining law is not directly applicable here, we think it likely the Court would adopt similar logic in construing 24 V.S.A. §1233.

We therefore find the Court’s use of the word “contract” in *Nelson* means an express agreement which includes (1) express terms governing the circumstances under which dismissal will be permitted, (2) these terms must unequivocally demonstrate a waiver of the right to for-cause dismissal, and (3) the waiver term must be supported by negotiated consideration in favor of the employee. For example, a town might offer heightened compensation in return for the town manager accepting an at-will condition of appointment as opposed to a just-cause condition. *Nelson* leads us to believe a Court would enforce such an arrangement only where the evidence expressly shows that both parties (selectboard and town manager) intended that a specific benefit is bestowed to the town manager to support the waiver of for-cause dismissal rights. See *Grievance of Gorruso*, 150 Vt. 139, 143-44 (1988) (courts must “construe a contract so as to ascertain the true intention of the parties.”).<sup>2</sup>

We note that Mr. Fulton “accepted” the Board’s offer of appointment in 2012, suggesting there was no actual negotiation of the terms of employment concerning termination. In other words, there is nothing suggesting, for example, that the Board agreed to pay Mr. Fulton a higher salary than it otherwise would have in exchange for Mr. Fulton agreeing to accept his position under at-will conditions.

There can be no authority for a selectboard to require a town a manger to agree to at-will employment as a condition of employment. Such a proposed agreement must be deemed invalid as against public policy because it is diametrically opposed to § 1233’s “for cause” provision. Such an approach would

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<sup>2</sup> “Where the language used in a contract will admit of more than one interpretation, we will look at the situation and motives of the parties, the subject matter of the contract, and the object sought to be attained by it.” *Id.*

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allow a municipality to simply override the law in such a way as to render a statute meaningless.<sup>3</sup> Hence, the act of hiring alone cannot be the consideration which could support acceptance of at-will employment by a town manager. Hiring alone is simply appointment under 12 V.S.A. § 1233.

It appears the parties cannot be held to have mutually intended that Mr. Fulton relinquish the right bestowed upon him under 24 V.S.A. § 1233 in connection with his appointment as Town Manager. The circumstances suggest that at the time the parties did not know what *Nelson* has now clarified, that appointments under the statute include a condition limiting the selectboard to “for cause” dismissal. There cannot have been a voluntary and express relinquishment by Mr. Fulton of a right which he did not know he had. Similarly, there cannot have been consideration from the Selectboard to Mr. Fulton in support of a relinquishment because the Selectboard apparently had no belief that his employment was to be automatically for-cause.

Parties’ intent is normally judged by the express terms of an agreement. However, where there is ambiguity, the parties’ stated subjective intent may be considered in attempting to discern their intent at the time of contract formation. We note that Mr. Fulton is quoted as stating at an October 28, 2015 Selectboard meeting “I just want to make it clear that I believe that *Nelson v St Johnsbury* changed the terms of my relationship with the town and I am clearly an at-cause employee.” That statement makes it appear that Mr. Fulton believed his employment with the Town was, at least up until the time *Nelson* was issued on January 16, 2015, in fact at-will.

Though it may seem counterintuitive, our opinion is that this belief on his part cannot constitute an intent, at the time of his appointment, to have waived the right bestowed upon him by 24 V.S.A. § 1233. *Nelson* did not change any town manager’s employment status, it merely clarified the law, and hence the status of these employees, even if they individually thought their status was something other than for-cause. The Court’s decision was a pronouncement that town managers appointed without a contract containing express terms on grounds for dismissal were appointed with a for-cause dismissal condition of employment derived from 24 V.S.A. § 1233.

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<sup>3</sup> The concept that municipal employees appointed by a selectboard are statutorily entitled to for-cause dismissal is not unique. See, e.g., 24 V.S.A. § 1931(a)(legislative body may appoint police officers who “shall hold office during good behavior, unless sooner removed for cause, or in the case of temporary police officers, for the term specified.”); see also 24 V.S.A. § 4448 (zoning administrator appointed by the legislative body “may be removed for cause at any time by the legislative body ...”).

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We also find it may be ambiguous what the Board meant in its motion to appoint Mr. Fulton “effective immediately and at will.” This language could reflect intent merely to affirmatively recognize the Selectboard’s authority to appoint a town manager. As the Court said in *Nelson* about the term “at will” in § 1233:

We think this term reasonably can be read to indicate that it is the selectboard—and no other authority—that may remove the town manager and that the selectboard has the discretion to initiate termination. We note that, in support of this construction, the statute established no process for termination, but the requirement for cause is still a limitation on the discretion of the selectboard. This reading is consistent with that statute's limitation on the selectboard’s discretion in selecting a town manager. See 1917, No. 104, § 2 (requiring selectboard to consider education, training, and experience when selecting town manager and prohibiting selectboard from considering town manager's political belief).

*Nelson*, 2015 VT 5, ¶ 20.

We do not think that the terms of the 2008 contract with Mr. Webster, including its section 12(a), has been made a part of Mr. Fulton’s employment. The 2011 minutes regarding interim appointment state that appointment was made “with the same compensation and benefits as provided to the previous town manager in the Fiscal Year 2012 budget *and as provided in the previous town manager’s contract* except” for three specified modifications to compensation and benefits. It is not clear that this italicized language is meant to indicate anything other than that Mr. Fulton’s pay and benefits would include compensation and benefits set out in the Webster contract, whether or not part of the FY 2012 budgeted compensation and benefits. However, even if this part of the 2011 Board’s action can be read to mean the Board intended to make all the terms of the Webster contract a part of Mr. Fulton’s interim hiring, the Board’s 2012 action appointing Mr. Fulton as Town Manager omits any similar reference to the Webster contract.<sup>4</sup> In other words, even if all of the Webster contract terms governed Mr. Fulton’s employment when he was interim town manager, we find those terms were not made part of his appointment in 2012.

If anyone were to contend that terms of the Webster contract affect the analysis here as to what the Selectboard understood about its appointment of Mr.

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<sup>4</sup> Another factor weighing against finding intent to make all of the Webster contract terms applicable to the appointment of Mr. Fulton is that the Webster contract included a set term of employment from 2008-2011. That term would be illogical to include as part of an appointment of Mr. Fulton in either 2011 or 2012.

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Fulton in 2012, we note that the reference in that contract in section 12(a) (“Removal”) to 24 V.S.A. § 1233 is at-odds with the Court’s construction of the statute in *Nelson*. So, even if the terms of the Webster contract are considered applicable to Mr. Fulton’s employment, the fact that section 12(a) has within it a clear irreconcilable provision between it and statute make unlikely any meaningful effect on whether Mr. Fulton’s employment is terminable at-will.

We have not attempted a thorough analysis of the Town Personnel Policy (last revised September, 2010) because *Nelson* appears to have left no room for the statutory “for cause” standard to be modified by a general personnel policy.<sup>5</sup> Though a personnel policy may obligate an employer to observe certain conditions of employment, a policy is not a “contract.” Further, the Legislature has specified when conditions of employment of appointed officials are determined by a personnel policy. See 24 V.S.A. § 4448 (zoning administrative officer “shall be subject to the personnel rules of the municipality.”).<sup>6</sup> Therefore, regardless of what the Town’s Personnel Policy says about whether cause is required for dismissal of Town employees, we think it is unlikely the Policy could be relevant to this aspect of Mr. Fulton’s employment.

In conclusion, no affirmative action was required on the part of Mr. Fulton or the Board to create a just-cause employment relationship with the Town; the law did so automatically upon his appointment. The question becomes whether he entered into an agreement in which he clearly bargained-away that element of the employment relationship. Our opinion is that his acceptance of the offer of appointment made in the Board’s 2012 motion would likely be viewed by the Vermont Supreme Court as insufficient to have achieved this result.

Responses to Selectboard’s List of Questions:

**A. “Is there a legal difference between a written contract and the current situation in Norwich where the Town Manager’s working conditions and salary have been set by Selectboard action and the Town’s Employment policies?”**

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<sup>5</sup> Section 5(B) does make the Personnel Policy “applicable to the Town Manager except as they may be covered specifically by any employment contract between the Town Manager and the Selectboard, in which case the employment contract will take precedence.” As discussed previously, we find no employment contract between the Town and the Town Manager sufficient to affect the question of grounds for dismissal.

<sup>6</sup> The applicability of a personnel policy to the zoning administrator would not, in our view, be capable of overriding the for-cause standard also imposed in § 4448.

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Yes, as to the subject of grounds upon which the Board is authorized to dismiss the Town Manager from employment. We believe the *Nelson* decision requires an express contract term by which the appointee relinquishes the right to for-cause dismissal from employment.

As to other terms of employment such as performance expectations, procedures, benefits, etc., the answer is: Not necessarily. The provision of the Personnel Policy making it applicable to the Town Manager should be considered effective for subjects other than hiring and removal, except to the extent there are Policy provisions regarding compensation and benefits which are at-odds with what was approved in the appointment motions.

**B & C. Is there documentary evidence of a binding legal agreement between the current Town Manager and the Town? If so, what are the specific provisions of that agreement?**

The minutes are evidence of an enforceable agreement only as to pay and benefits. The Webster contract terms are not applicable to the current Town Manager.

**D. Is there documentary evidence to support the specific contract terms this Town Manager asserts are currently in effect between himself and the Town?**

If he is asserting that the contract terms from the Webster contract apply to his employment, the answer is "No." There is no general adoption of the terms of that contract in the Selectboard's 2011 or 2012 appointment action.

**E. Is the Town Manager an "at will" employee of the Town?**

No, as detailed above.

**F. Does paragraph 9 of *Nelson v Town of Saint Johnsbury* limit the *Nelson* holding to those instances where there is an "absence of a contract between the manager and the town?"**

It limits the holding to instances where there is an absence of a contract which expressly provides grounds other than cause as permitting removal.

**G. What are the duties, roles, and responsibilities of the Selectboard if it enters into contract negotiations with the Town Manager?**

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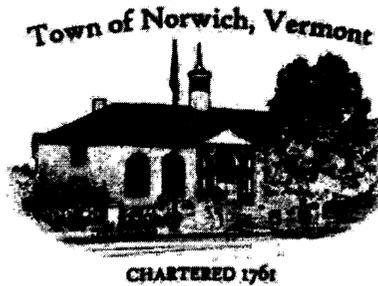
The Selectboard would be acting in its role as chief administrator for the Town, exercising its statutory duty of general supervision of matters not relegated to other officials such as the Town Manager. It may act only by the concurrence of a majority of its members, as individual members have no power to bind the Town without authorization by a duly taken majority action. The Board's members are fiduciaries of the Town and so have an obligation to make at least a reasonable effort to protect the Town's economic interests in attempting to reach terms with an employee. See *Davenport v. Town of Johnson*, 49 Vt. 403 (1877) (recognizing fiduciary relationship between "selectmen" and town they represent). As the Town cannot dismiss the current Town Manager from employment absent due process and just cause, one duty that may be relevant is to avoid taking any such action in the event negotiations are unsuccessful. If advice is sought as to specific contract terms and negotiation strategies, we will require further information and communication with the Board.

Thank you for the opportunity to present this analysis. Please let me know any questions or concerns, and in the meantime I will plan to be available by telephone to speak with the Board at its convenience.

Sincerely,



John H. Klesch



December 23, 2015

Robert Wolfe, Reporter  
Valley News  
PO Box 877  
White River Junction, VT 05001

RE: Your Public Records Request – December 10, 2015

Dear Mr. Wolfe:

You have requested to inspect or copy certain public records of the Town. Specifically you have requested to inspect or make copies of "Attorney John Klesch's correspondence with the Norwich Selectboard and members thereof ...on questions related to the town manager's terms of employment, including Attorney Klesch's legal opinion. A copy of Attorney Klesch's opinion has already been released to the public. Enclosed is other correspondence responsive to your request, as well as a list of related other materials, all of which should be accessible to you in the Town Offices. Consequently, copies of these materials have not been included.

If you should have questions, please let me know.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Cook", written in a cursive style.

Linda Cook, Chair  
Norwich Selectboard

Encl.

List of Responsive Documents -- December 10, 2015 PRA Request

	Date	From/To	Type	Description
1.	November 17	JHK to M. Layton	Email	JHK acknowledges receipt of materials provided to facilitate opinion.
2.	Same	M. Layton to JHK	Email	M. Layton response to JHK request for documents Cover letter and list attached L. Cook is primary contact.
3.	Same	M. Layton to JHK	Email	Submitting materials
4.	November 30	S. Flanders to JHK	Email	Input from S. Flanders on terms of employment
		and reply		
5.	December 1	M. Layton (x3) JHK	Email	Documents provided to facilitate opinion Cover letter and list attached.
6.	December 1	B. Munday to JHK	Email	Town Report 2002
7.	December 6	L. Cook to JHK	Email	Addresses for delivery of opinion
8.	December 10	JHK to Board	Email	Email and Opinion

## Jenn Grindle

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**From:** John H. Klesch  
**Sent:** Tuesday, November 17, 2015 10:45 AM  
**To:** 'Mary Layton'  
**Cc:** lcook2825@gmail.com; Jenn Grindle  
**Subject:** RE: Linda Cook materials addition

Mary:

Thank you. I am acknowledging receipt of both emails and documents, though I think Jenn in my office is going to follow-up with you on an item.

I will plan to take a preliminary look through the materials and then touch base before more extensive review. Should I use you or Linda as my primary contact and, if you, would you let me know your best telephone number?

Regards,

John

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John H. Klesch  
Stitzel, Page & Fletcher, P.C.  
171 Battery Street  
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**From:** Mary Layton [<mailto:marydlayton@gmail.com>]  
**Sent:** Monday, November 16, 2015 10:13 PM  
**To:** John H. Klesch  
**Subject:** Linda Cook materials addition

**Jenn Grindle**

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**From:** Mary Layton <marydayton@gmail.com>  
**Sent:** Tuesday, November 17, 2015 5:37 PM  
**To:** Jenn Grindle  
**Subject:** Re: Linda Cook/Town of Norwich questions

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Ok, I will send them through this evening.

Sent from my iPhone

On Nov 17, 2015, at 3:37 PM, Jenn Grindle <[JGrindle@firm SPF.com](mailto:JGrindle@firm SPF.com)> wrote:

Hi Mary, it looks like we may be missing the September 19, 2011 minutes listed in the index.

**From:** Mary Layton [<mailto:marydayton@gmail.com>]  
**Sent:** Monday, November 16, 2015 9:43 PM  
**To:** John H. Klesch  
**Cc:** Linda Cook  
**Subject:** Linda Cook/Town of Norwich questions

Greetings to John Klesch

I am submitting information on behalf of Linda Cook, Chair of the Norwich Select Board. She has been authorized by the Select Board to submit questions and documentation in regard to the Norwich Town Manager's current employment status.

Enclosed are several files.

Please contact Linda Cook if you have questions.

Her email is [lcook2825@gmail.com](mailto:lcook2825@gmail.com)

Mary Layton

**November 17, 2015**

**Hi John**

**I have been authorized by the Norwich Select Board to retain you to give your legal opinion of the enclosed questions regarding the Norwich Town Manager's current employment status.**

**I am providing supporting documentation including Select Board Meeting Minutes, CATV links and meeting excerpts, former Town Manager Pete Webster's contract, the current Town of Norwich Personnel Policy, and emails.**

**Linda Cook, Chair  
Norwich Select Board**

## Documents Index

1. Legal Questions regarding Town Manager's Contract
2. April 11, 2012 Select Board Minutes.
3. The September 19, 2011 Minutes.
4. Pete Webster's contract.
5. Citizen email Chris Katucki's research.
6. Watt Alexander and Chris Katucki's research.
7. Town of Norwich 2010 Personnel Policy
8. Neil Fulton statements documented in the October 28, 2015 Minutes and CATV video tape.
9. A motion was made to ask Neil Fulton to provide documentation of the terms of his contract that are in addition to the terms adopted and recorded in the April 11, 2012 Minutes. CATV video tape.
10. March 25, 2015 Minutes
11. Memorandum from Christopher Ashley for inclusion in the 3/25 Select Board Packet regarding a step increase.

## Jenn Grindle

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**From:** John H. Klesch  
**Sent:** Tuesday, November 17, 2015 11:21 AM  
**To:** Jenn Grindle  
**Subject:** FW: Linda Cook materials addition

FYI

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**From:** Mary Layton [mailto:marydayton@gmail.com]  
**Sent:** Tuesday, November 17, 2015 11:21 AM  
**To:** John H. Klesch  
**Subject:** Re: Linda Cook materials addition

John

Linda Cook is the primary contact on this issue.

In case you need to reach me my best phone number is 802-738-2033, my cell phone. The quickest way to get through to me is via text message.

Mary Layton

Sent from my iPhone

On Nov 17, 2015, at 10:44 AM, John H. Klesch <[JKlesch@firmspf.com](mailto:JKlesch@firmspf.com)> wrote:

Mary:

Thank you. I am acknowledging receipt of both emails and documents, though I think Jenn in my office is going to follow-up with you on an item.

I will plan to take a preliminary look through the materials and then touch base before more extensive review. Should I use you or Linda as my primary contact and, if you, would you let me know your best telephone number?

Regards,

John

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John H. Klesch  
Stitzel, Page & Fletcher, P.C.  
171 Battery Street  
P.O. Box 1507  
Burlington, VT 05402-1507  
Telephone: 802-660-2555  
Fax: 802-660-2552  
[jklesch@firmspf.com](mailto:jklesch@firmspf.com)  
Website: [www.firmspf.com](http://www.firmspf.com)

**John H. Klesch**

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**From:** John H. Klesch  
**Sent:** Monday, November 30, 2015 12:33 PM  
**To:** 'Stephen N. Flanders'  
**Cc:** lcook2825@gmail.com  
**Subject:** RE: Minority input regarding the terms of employment of the current Norwich town manager - ATTY CLIENT

Steve:

Thank you for your email. Per 1 V.S.A. § 172, we must view the scope of our assignment as defined by valid majority action of the Town's Selectboard and we will proceed accordingly. In other words, we must treat the Selectboard majority position as that of our "client." However, within that mandate, we are free to obtain and review all information which in our professional judgment is reasonably necessary and appropriate to rendering the legal services requested of us.

Therefore, please understand that we will review and consider your memorandum and email in the course of the analysis we have been asked to provide, but these materials will not expand the scope of the issues we have been tasked to review. Note we do consider our communications with individual Selectboard members to be attorney-client privileged, with that privilege belonging to the Selectboard.

Also note that I have been advised that the Chair is to serve as our contact point for communications. So, except possibly for information gathering, our communications will be made through the Chair until such time as we might be directed to follow a different protocol.

I hope this response is helpful.

Best regards,

John

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John H. Klesch  
Stitzel, Page & Fletcher, P.C.  
171 Battery Street  
P.O. Box 1507  
Burlington, VT 05402-1507  
Telephone: 802-660-2555  
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[jklesch@firmspf.com](mailto:jklesch@firmspf.com)  
Website: [www.firmspf.com](http://www.firmspf.com)

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**From:** Stephen N. Flanders [mailto:hopsonroad@gmail.com]  
**Sent:** Wednesday, November 25, 2015 4:02 PM  
**To:** John H. Klesch  
**Subject:** Minority input regarding the terms of employment of the current Norwich town manager

John H. Kletsch, Attorney  
Stitzel Page & Fletcher  
171 Battery Street  
P.O. Box 1507  
Burlington, VT 05402-1507  
Phone: 802-660-2555

Dear Mr. Kletsch,

I write as member of the Norwich selectboard, who voted in the minority to have the attached memo brought to your attention, regarding the terms of employment of the current Norwich town manager.

Please be aware that you have been contacted by Chair, Linda Cook, based on the following action of the Norwich Selectboard:

2. Town Manager Contract (Executive Session May be Required) (Discussion/Possible Action Item). After considerable discussion regarding how the questions were developed, Layton moved (2nd Goulet) to authorize the Selectboard Chair to hire Attorney John Klesch to give his legal opinion of Selectboard questions regarding the Norwich Town Manager's current employment status. Motion passed 3 to 2 (yes – Cook, Goulet and Layton; no – Ashley and Flanders).

Contrary to selectboard practice, the questions that you may have been sent (if any) were not part of the SB package prior to the meeting—as is the long-held practice of the board—and, as of the time Ms Cook contacted you, had not been seen by the public. At that same meeting, the same three members of the board refused to consider the attached memo, because it was not "posed in the form of a question." I asked for this memo to be reconsidered at last night's SB meeting and was again rebuffed. Therefore, I remain the only member of the board, whose input was not provided to you.

The questions cited in the motion and this memo are now part of the public record.

The public utterances of Ms Layton suggest that she believes that the town manager is an "at will" employee and that *Nelson v St. Johnsbury* does not apply.

I felt that this background should inform you, regarding whether to consider the attached memo.

Sincerely, Steve F.

Stephen Flanders, Member of the Norwich Selectboard  
317 Hopson Road

Norwich, Vermont 05055

802-649-1134 (Home)

**Any response or reply to this electronic message may be subject to the Vermont Public Records Act. Any views expressed in this e-mail are mine and may not reflect those of the board. Vermont statutes confer no special powers to individual selectboard members. Statutory selectboard powers arise from actions of the body at warned, public meetings with a few exceptions.**

**Jenn Grindle**

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**From:** Mary Layton <marydayton@gmail.com>  
**Sent:** Tuesday, December 01, 2015 5:24 PM  
**To:** John H. Klesch  
**Subject:** Norwich documents 1 of 3  
**Attachments:** Documents Index November 30, 2015.docx; Second Cover Letter to John Klesch.docx; Select Board Minutes January 16, 2013.pdf; Select Board Minutes November 26, 2013.pdf

Cover letter, Documents Index, Jan 16, 2013 minutes, Nov 26, 2013 minutes

**November 30, 2015**

**Hi John**

**This is the second submission of supporting documentation including five sets of Select Board Meeting Minutes and a draft copy of an Employment Agreement submitted by the Norwich Town Manager on July 8, 2015.**

**Linda Cook, Chair  
Norwich Select Board**

**Documents Index  
November 30, 2015**

- A. Minutes of Special Select Board Meeting of January 16, 2013**
- B. Minutes of Select Board Meeting of November 26, 2013**
- C. Minutes of Select Board Meeting of July 8, 2015**
- D. Minutes of Select Board Meeting of July 29, 2015**
- E. Minutes of Select Board Meeting of October 28, 2015**
- F. Draft Copy (7/8/2015) of Norwich Town Manager Employment Agreement submitted by Town Manager**

**Jenn Grindle**

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**From:** Mary Layton <marydayton@gmail.com>  
**Sent:** Tuesday, December 01, 2015 5:27 PM  
**To:** John H. Klesch  
**Subject:** Norwich documents 2 of 3  
**Attachments:** Select Board Minutes October 28, 2015.pdf; Select Board Minutes July 8, 2015.pdf;  
Select Board Minutes July 29, 2015.pdf

Minutes Oct 28, 2015

Minutes July 8, 2015

Minutes July 29, 2015

**Jenn Grindle**

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**From:** Mary Layton <marydlayton@gmail.com>  
**Sent:** Tuesday, December 01, 2015 5:28 PM  
**To:** John H. Klesch  
**Subject:** Norwich documents 3 of 3  
**Attachments:** Town Manager Employment agreement.pdf

**Draft Employment Agreement submitted to the Select Board by the Town Manager**

**Jenn Grindle**

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**From:** John H. Klesch  
**Sent:** Tuesday, December 01, 2015 7:27 PM  
**To:** Jenn Grindle  
**Subject:** FW: Norwich 2002 Town Report  
**Attachments:** 2002 Norwich Town Report.pdf

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**From:** Bonnie Munday [<mailto:BMunday@norwich.vt.us>]  
**Sent:** Tuesday, December 01, 2015 9:57 AM  
**To:** John H. Klesch  
**Subject:** Norwich 2002 Town Report

Please find the attached from Linda Cook.

Thank you,

**Jenn Grindle**

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**From:** John H. Klesch  
**Sent:** Thursday, December 10, 2015 4:53 PM  
**To:** 'lcook2825@gmail.com'; 'stephen.flanders@icloud.com'; 'dangoulet53@gmail.com'; 'C.Ashley.SB@gmail.com'; 'marydayton@gmail.com'  
**Cc:** Jenn Grindle  
**Subject:** Town of Norwich - Town Manager Employment Status Opinion - ATTY CLIENT  
**Attachments:** NOH15-001 OPN Town Manager.pdf

Dear Selectboard Members:

Please see attached opinion letter concerning our analysis of the status of the Norwich Town Manager's employment with the Town. Again, please note that the attached letter is an attorney-client privileged communication.

Best wishes,

John

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John H. Klesch  
Stitzel, Page & Fletcher, P.C.  
171 Battery Street  
P.O. Box 1507  
Burlington, VT 05402-1507  
Telephone: 802-660-2555  
Fax: 802-660-2552  
[jklesch@firmspf.com](mailto:jklesch@firmspf.com)  
Website: [www.firmspf.com](http://www.firmspf.com)

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December 6, 2015

Dear Mr. Klesch

Please send your opinion to each Norwich Select Board Member.

Their email addresses are below:

[lcook2825@gmail.com](mailto:lcook2825@gmail.com)

[stephen.flanders@icloud.com](mailto:stephen.flanders@icloud.com)

[dangoulet53@gmail.com](mailto:dangoulet53@gmail.com)

[C.Ashley.SB@gmail.com](mailto:C.Ashley.SB@gmail.com)

[marydayton@gmail.com](mailto:marydayton@gmail.com)

Thanks

A handwritten signature in black ink, appearing to read "Linda Cook". The signature is written in a cursive style with a large initial "L".

Linda Cook