
MEMORANDUM

TO: Norwich Select Board
FROM: Mary Layton
SUBJECT: Reply to Stephen Flanders Correspondence 1/7/2016
DATE: January 30, 2016
CC: Neil Fulton, Nancy Kramer

To the Norwich Selectboard:

I am responding to the memorandum that Stephen Flanders submitted as Correspondence on January 7, 2016 as my name and actions were described and criticized. My perspective is as follows:

Two legal opinions solicited by the Selectboard provided value to the Town this year. An opinion on December 10, 2015 by John Klesch provided clarification of the Town Manager's employment status. It stated that the Town Manager is not currently employed under a contract. Two of the terms offered when he was appointed are considered to be contractual. They are his salary and benefits. A third term that stated that he was hired "At Will" was considered by Klesch not to be contractual in light of the recent Nelson vs. St Johnsbury case. Although it does not make sense to me that two of the three terms of employment were contractual and one was not, this legal opinion provides clear guidance for the Selectboard in making decisions regarding the Town Manager's employment status.

An additional valuable opinion was solicited by the Selectboard and given by Klesch on November 4, 2015. In regard to authority for construction projects it clearly demonstrates the balance needed between Selectboard and Town Manager as to their respective roles of direction and administration. It gives practical recommendations as to how this balance may be achieved. I think it shows the type of balanced governance that is needed for both construction projects and the everyday affairs of the Town. It includes the recommendation that directives of the

Selectboard in regard to construction projects be made in a written memorandum so that expectations are clear in terms of scope, vision, billing, and building construction updates.

As a contrast, please note the opinion by Paul Gillies that was solicited by the Town Manager without direction by the Selectboard on April 29, 2015. This opinion references the statutory role of a Town Manager as stated in 24 V.S.A section 1236(4) in managing construction projects but fails to show the statutory authority of the Select Board under V.S.A. 1233 to direct and supervise him. The action of the Town Manager of soliciting this narrow opinion and in using Town funds to do so is dead wrong. There must be direction and supervision of the Selectboard in all matters of the Town. The Town Manager overstepped his statutory authority in this case, with the vociferous support of Stephen Flanders.

The Selectboard voted to each develop questions to be asked of attorney Klesch to prepare for the December 10, 2015 opinion of the Town Manager's employment status. Linda Cook was delegated as the representative of the Selectboard to the attorney. With the exception of Stephen Flanders, each Selectboard member submitted questions. Flanders submitted a lengthy statement but no questions, which was not submitted by Linda to Klesch. Flanders subsequently submitted the statement to attorney Klesch on his own. This is just another example of Flanders unwillingness to abide by a majority decision of the Selectboard. He did not choose to participate in the effort by asking questions of legal counsel. Perhaps his position was already clear in his mind without this legal opinion.

Flanders also objected to a recommendation by attorney Klesch that the legal opinion of December 10, 2015 be placed under attorney-client privilege. A majority of the Board voted to accept attorney-client privilege in order that the entire board would be able to read the opinion and discuss it together before the results were released to the public. This seemed in my view to be prudent in that a personnel matter was being discussed. Flanders did not want to abide by a majority vote of the Board in this case, and made a great fuss in support of his minority view.

It is essential and legally required that the Town of Norwich be governed according to statute and with particular attention given to the balance of statutory powers given to the Selectboard and the Town Manager. The Selectboard should be striving to get the best result for the Town under statutory authority. Misguided and divisive action by Stephen Flanders to protect the Town Manager and subvert majority vote of the Selectboard is not helpful in this regard.