Call to Order

Alderman President John Anglace called the Special Meeting to order at 6:00 p.m.

Committee members present:

- Alderman John F. Anglace, Jr., President
- Alderman Lynne Farrell
- Alderman John “Jack” Finn
- Alderman Stanley Kudej
- Alderman Noreen McGorty
- Alderman John P. Papa
- Alderman Eric McPherson
- Alderman Anthony Simonetti

- Martin Coughlin
- Ken Nappi

Agenda Items

1.) Approval of Minutes – Special Meeting – December 2, 2011

Alderman Anglace moved to approve the minutes of the meeting held on December 2, 2011. Seconded by Alderman Simonetti. All were in favor. Motion carried 9-0.

2.) Presentation and Discussion

Alderman Anglace introduces Peter J. Lewandowski, Assistant General Counsel, State of Connecticut, Office of State Ethics. Alderman Anglace asks the Ethics Board if they have any more questions other than what is already to be discussed. Alderman Finn asks if the Office of State Ethics would be willing to help the city of Shelton with any training that might be needed. Mr. Lewandowski stated that his office can provide comparative analysis of similar provisions that municipalities adopt; that the State also has. The office can provide an overview of the basic elements of an Ethics code that should be contained in the ordinance.
Alderman Finn asks if the State of Connecticut Ethics is part of State statute. Mr. Lewandowski confirms they are general statutes, Chapter 10. Alderman Finn asks if that includes gifts, which Mr. Lewandowski confirms that they are, that it is a major component of the Ethics code. Alderman Finn declares he would like this topic to be discussed during this meeting, and that there should be zero tolerance for gifts to elected officials in the City of Shelton. Alderman Anglace asks if there are any other points the Board would like discussed. There are none.

Mr. Lewandowski begins by saying all of the topics being discussed during this meeting can be found online if there are any more questions following this meeting. On behalf of the Office of State Ethics, he provides a disclaimer that the Office does not have jurisdiction over municipal matters. This means that anything said does not have any legal weight and is for informational purposes only. This is why they talk about comparative analysis between the State and municipalities. He claims there is a considerable overlap of basic provisions in each Ethics code, whether it is State or municipal. They can be very similar. Mr. Lewandowski claims there are elements which are commonsensical, sometimes called the “Ten Commandments” of the Ethics code; including no bribery. This includes either substantial or direct conflicts, a public official would abstain from taking official action. These are the most basic provisions, whether you are in Connecticut, Kansas, etc.

Mr. Lewandowski claimed the Municipal Ethics Task Force was formed in 2008 subsequent to a law passed in 2007 by the General Assembly. Members of the Government Administration Elections Committee approached the Office of State Ethics because the State was contemplating extending the Office of State Ethics jurisdiction to municipalities. The former Ethics Commissioner was asked to create a model code for municipalities. Because of budgetary problems the State faced in the 1990s, they pulled the plug on the concept of having the State take on the jurisdiction because that would create a bigger bureaucracy and additional funding would be required. A model code was created in its place. Mr. Lewandowski declared the issue was revisited in 2006-2007 to dust off the old model code and revisit the idea of having municipal ethics under State jurisdiction. At the time there were divided views on what the State should do. Was it appropriate for the State to have a centralized authority in Hartford have control over municipal matters of individual towns and cities. He said the problem is that they could not have a “one size fits all” type of approach to municipal ethics. What is needed in Hartford and New Haven, is different to what is needed in Shelton, Derby, etc. He claimed the better approach would a local one. He believes the consensus of the Ethics Task Force is that there is a need of some form of municipal ethics in each town and municipality of the State. He said the report published in 2009 states that right now not all municipalities have an established code. Out of 169 towns, 124 have some form of Ethics code (in 2009).
Mr. Lewandowski claimed that it would differ from town to town what should be in the Ethics code. General there should be basic principles in that code. The Municipal Ethics Task Force recommended that there be three options, proposed in Bill 942 in 2009. It provides three basic approaches to establishing an Ethics code and an Ethics Board. Certain municipalities would be asked to adopt a code that would contain basic provisions and, according to the Bill, the basic provisions would be, for example: No public employee or public official shall engage or participate in any business or transaction including outside employment with a private business or have an interest, direct or indirect, that is incompatible with proper discharge of his or her official responsibilities. Also, the classic bribery provisions are also included: Your official action shall not be influenced by what you have received. Mr. Lewandowski declared that an important thing to remember is that bribery provisions are tried in both the ethics code and in criminal statutes. So if you violate bribery provisions, both the Ethics Board and the State's Attorney Office can investigate and pursue criminal charges. Bribery is the “cardinal sin” of violating the public trust. This provision would be expected to be in any Ethics code.

Mr. Lewandowski continued, explaining substantial and direct conflicts. For example he explained: Say you are a public official and you are about to take official action on matters that may effect your own financial interest of your immediate family or of your associated business. Associated business means any entity in which you have financial stake. Let's say you're an owner or a director of a private business. It could also be both for profit or non-profit which there are various restrictions for. In any event, you would be prohibited from taking official action where you directly would get some form of financial advantage. For example, let's say you're voting on some grants, or disbursements of funds to something...Obviously the public official who has filed an application, it's commonsensical that he or she would have to abstain from voting on their own application. That's a direct conflict. It is also substantial because if they vote and the action is positive to them, they stand to gain financially. Anywhere where you, personally, benefit and no one else does, that's a substantial and direct conflict. What happens when you have a conflict that benefits a wider group? Let's say you own a plowing business, but the deliberative body votes on is beneficial to all businesses that are of the same category. Facts are very important and will drive Ethical considerations. Are we talking about a considerable amount of businesses? Are we talking about ten, twenty, thirty? Or are we talking about two folks who plow the streets of a neighborhood. So, generally if you vote on something and it's so obvious that the financial benefit is likely to the person who applied for a grant and very little ancillary benefit happens to others, then, again, it is a substantial and direct conflict.

Mr. Lewandowski claimed this aspect is a extremely difficult one to deal with and decide in very small towns where you have only one or two businesses that deal with plowing, as an example. It is less problematic in larger towns because of wider
competition. But those are elements the codes address. Obviously, you may also address the issues of potential conflicts. Essentially, when you think of prohibitions of any code, they principally address ill financial gain. Will someone benefit financially from official action, and also their immediate family? General statutes defines immediate family and there is no confusion by what is meant by immediate family and associated business. Financial gain is the component that links all of these provisions, be it gifts, substantial and direct conflict, potential conflicts or use of office. Use of office provisions frequently happen in outside employment scenarios, where people moonlight and they try to benefit, or provide benefit, to their outside employer through their own official actions. Even though they may not be direct or immediate financial gain, they benefit the outside employer. So, indirectly, they also use their office for their own benefit down the line.

Alderman Anglace asked what the status is of the Task Force recommendations as of now. Mr. Lewandowski responded that the status is frozen, that it is back to status quo. There is no compulsion on municipalities to adopt Ethics codes, though it's recommended by the Municipal Ethics Task Force. Bill 942 did not pass to the floor of either chamber. The principal reason for this was because the State was facing a growing financial crisis at the time. People were concerned it was another unfounded mandate on municipalities and this provision died in the General Assembly. The recommendations of the Task Force are three-fold. Municipalities should have some form of Ethics code on their books, a functioning Ethics Board to enforce and provide advice on the code that is already on the books. The last one was if the resources are limited, it was recommended to regionalize enforcement. A number of towns, depending on their size, could pull their resources together to enforce and provide advice on the Ethics codes. The final recommendation was for the Office of State Ethics to review the Ethic codes which were on the books. There was a timetable proposed in which all municipalities, if they wanted to keep their own code and Board, they should send a report to the Office of state Ethics which they could review over the next year. If a municipality did not submit an Ethics code by a certain date, they would be forced to fall under the Office's jurisdiction and the State code would be triggered and imposed on those municipalities. Right now the status is nowhere. It's simply, things are as they are. Each municipality can, may or may not, under Title 7 of the General Statutes, you have the option of adopting a code, also modifying the code and addressing your own needs and to have an Ethics Board to provide advice. Very little has changed since 2009. No new movement and I don't anticipate, frankly, any movement.

Alderman Anglace asked Mr. Lewandowski if the Office of State Ethics would still be willing to review the codes. Mr. Lewandowski responded that they would review it, but he would highly recommend reviewing it for the basic principles to make sure, or to provide recommendations that should be considered including “X, Y and Z” if they are missing from your codes. But, again, those are strictly recommendations, nothing else. Mr. Lewandowski explained that he tells all municipalities that it is critical to have their town attorney go through the code and make sure it is compatible with the authority that's granted to the municipality, so it doesn't go into areas that are not permitted under the
law. We can provide guidance if something is missing and it should be there but, ultimately, it is up to you to determine whether to insert it or not or to leave something out. Mr. Lewandowski recommends having the town attorney or outside council, someone who is familiar with your ordinances, review the document. The Office of State Ethics cannot go out of their jurisdiction, it has no legal significance.

Mr. Lewandowski continued explaining that he met with a Board in North Haven, who had recently amended their code of Ethics. He noted it was comprehensive. The big issue which they addressed was how their Ethics Board was appointed. The Office of State Ethics receives many calls from concerned citizens and public and municipal officials about the deficiencies in their town codes. Many of these concerns are about how people are elected to these Ethics Boards. In some towns, Mayors directly appoint members to the Board which Mr. Lewandowski admits is problematic; the power vested by a single person. In others, members are unanimously appointed by various town councils. For example, the Board of Aldermen. There is a wide range of possibilities.

Alderman Anglace pointed out that the CCM, which was mentioned earlier, said they have offered to come in and put together an Ethics workshop to help guide the Board in the proceeding. Alderman McGorty confirmed she had attended a workshop in Monroe. McGorty declared it would be helpful to hold a workshop in Shelton, though the workshop she had attended did not directly address this issue as topics of workshops rotated and were not discussed at that meeting. Alderman Anglace answered that the Board would ask the CCM to focus on the development of an Ethics code and give them an idea of where they are now. Mr. Lewandowski responded that the Office of State Ethics always refer municipalities to the CCM and their website, as they have the most up-to-date information on this issue. He claimed the CCM is also a great resource for communication between municipalities.

Alderman Anglace presents Mr. Lewandowski with a copy of the Board's proposed Ethics code, their ideas for development and the minutes from their meetings which addressed this issue, asking Mr. Lewandowski to review the documents and provide feedback and guidance.

Mr. Lewandowski moved to the topic of gifts. He claimed that many municipalities have an outright ban on gifts, which is permitted under the State law for individual State agencies to be more restrictive than the State Ethics code. They cannot be less restrictive, as the State Ethics Code is the foundation. The can more restrictive, as long as they do not violate other laws within constitutional laws. The State Ethics Code has a general prohibition on gifts, but there is a list of seventeen exceptions of the so-called “non-gifts.” For example, gifts between spouses. If you have a public official whose spouse is a lobbyist, would the public official be prohibited to give an anniversary gift to someone who is lobbying State government? Also, gifts to the State are permitted. For example, a single person or business donating to the ceremony of a State Trooper
who died on duty. Another example would be a computer company donating computers to a local school. However, gifts which influence official action, gifts from restricted donors (lobbyists, people who do business or seek to do business with the State) are not permitted. There are also non-restricted donors, which are limited to $100.

Mr. Lewandowski mentioned that the State code and most Ethics codes generally stay away from the issue of appearances. They are difficult to enforce. There has to be some kind of connection between what you do and the financial benefit that you derive or provide to your immediate family or some associated business. It is not that legislating appearances are a bad idea, but it is not as common. If there is an issue with appearances, then some may put an outright ban on gifts. It depends on the needs of the town and municipality.

Alderman Anglace mentioned at times he does not realize he is getting a gift. If he is out to lunch with a friend, and that friend buys his lunch, is that considered a gift? Mr. Lewandowski responded that, generally, there is no prohibition on gifts between colleagues of equal rank. Many issues under both the State and municipal Ethics codes are fact driven. Facts will drive how the law is applied. Whether it is outside employment, revolving doors, post-government employment, gifts, etc.

Mr. Coughlin asked: At the State level, if there is an Ethics complaint, and this Board finds there is an Ethics violation, how does the enforcement take place? Do they just say “John, you shouldn't have done that”? Do they say, “Well, we'll call the State Police”? And how does that interact with, for example, unions? If you are disciplining a union member, how does that interact with their contracts? Mr. Lewandowski responded that, at the State level, enforcement of an violations are, first of all, confidential in its initial stages. For example, complaints can come from outsiders, they can be generated by the office itself by doing preliminary investigations. A formal complaint is filed, it is confidential when it is filed against a respondent. A respondent always has the ability to left away confidentiality. Every complaint however remains confidential until the establishment of probable cause. We have specific proceedings under State law in which a judge presides over a probable cause hearing. If the probably cause is established, then confidentiality is lifted. The following proceedings, a full board hearing, is then public. Mr. Lewandowski admitted there is a debate over that under the State code because the enforcement proceedings are derived under a specific statutory scheme, independent of freedom of information. The bottom line is that it is open to the public, post-probable cause.

Mr. Coughlin continued describing a scenario for Mr. Lewandowski: If Mr. Coughlin were an Alderman and someone files a complaint because he had voted for something he should not have, what do they do? Does the Board say” (a) You shouldn't have done it? (b) He is dismissed from the Board and is to be replaced? Mr.
Lewandowski answered that you can always settle a case and not go to the full Board hearing, many people do. He claimed there are several options at the Board's disposal. 1.) Cease and desist. 2.) Impose a penalty of up to $10,000 per violation. Depending on what was violated, each provision carries up to $10,000 in penalties. Obviously, the most severe, not only of the Ethics laws but criminal statutes of the State, they have the authority to immediately ship that case to the State's Attorney Office for prosecution.

Mr. Coughlin continued by saying it is the Ethics Board at the State level that says the fine is going to be $5,000. Mr. Lewandowski confirms this. He claimed anything the Enforcement Officer does under the State statute has to be approved by the Board. Let's say there is a settlement proposal. They have closed sessions because the case is still sealed, it is still confidential. They have a session that is a Board hearing that is closed to the public and they discuss settlements. The Ethics Enforcement Officer will come to the Board and say “this” is what the respondent is offering. Ultimately, the Board really calls the shots as to what remedies, what penalties are imposed on the public official. That is a statutory authority.

Mr. Coughlin asked if municipalities are allowed to do the same? Mr. Lewandowski responded that municipalities are restricted under their statutory authority, or statutory powers, as to what penalties they can impose. You have the authority to terminate someone's employment if you have egregious violation of your ordinances by a municipal employee. Again, it depends on what framework you have on the books to do that. Penalties vary because you are limited by the statutory powers granted to you by the General Assembly. Mr. Lewandowski reiterates to talk with the council as to what is permissible and what is not.

Mr. Anglase asked to go back to the issue of confidentiality and described a scenario: He is going to file a complaint, and what you saying is that my complaint is going to be kept confidential and made to the Ethics Commissioner of the Ethics Board. And they notify the respondent and everything is still confidential until probable cause is determined, then it becomes open. Now what if I hold a new conference? That violates everyone's right under the policy. What happens to that complaint, is it null and void? How do they handle it? Mr. Lewandowski responded that you always have the option to dismiss it. You can also initiate, as an Ethics Board, a complaint on your own and investigate. Irrespective of the violations of confidentiality provisions, the Ethics Board can look at the document decide whether or not to pursue it further. Then, as a deliberative body, as an Ethics Board, you decide whether to initiate a complaint on your own. He admitted it is a thorny issue and though they are not frequent, they are problematic. The violation of the confidentiality provisions of the State Ethics Code carries a penalty because it is a violation of the code itself.

Mr. Coughlin asked what if the person had not been given Ethics training and did not realize he or she had violated it. Is that a defense against acquiring a penalty? Mr.
Lewandowski responded that is classic ignorance of the law. He continued it is important to provide incoming employees with a copy of the Ethics code. They can say they did not know, but if you have documentation that a copy has been given, or if they sign that they received it, it is not a defense. Going back to the confidentiality issue, whether it is under State or municipal. Someone going to the press prior to filing or post filing is still an issue because people can talk about their underlying issues in the complaint. For example: If you believe someone is a despicable human being and go to the media and say something about that, what is the difference between talking about the underlying issues that someone received a bribe and whether you can just simply say, I'm filing a complaint that says someone has received a bribe.

Alderman Simonetti referred back to the beginning of the meeting, when the “Ten Commandments” were mentioned. He asked if there is actually a list of these prohibitions. Mr. Lewandowski replied that this referred to the basic elements that should be included in a code. The most basic are the anti-bribery provisions, the substantial and direct conflict, gifts. The discussion on what is acceptable for gifts or whether there should be an outright ban is still there. Should there be some form of discussion of gifts in the code? Yes, it is somewhat connected to bribery provisions. Alderman Simonetti asked if there is a dollar figure on gifts? Mr. Lewandowski responded that there is a ban on gifts under the State code but there are various exceptions, and each of those exceptions contain specific dollar amounts. For example: a luncheon with someone who, let's say you meet with someone, you are an Alderman and someone buys you lunch. Provided they are in attendance. Under the State law for example, it is capped at $50 per year. From that single source. Technically speaking, you could go out to lunch quite frequently and not violate the law, as long as you stay under $50 per year, per source. You also have major life events that is under State law. Let's say it's a public official, you're getting married, or the birth of a child, or you're retiring from State service, a funeral. Under State law a lobbyist can give you a gift of up to $1000 per allocation of a major life event. Many think $1000 is a nifty sum, but up until 2008 it was unlimited.

There are no more questions from the Board. Alderman Anglace introduces Mr. Lewandowski to Mayor Mark Lauretti and Assistant Corporation Counsel Raymond Sous. Alderman Anglace thanks Mr. Lewandowski for taking the time to come to Shelton. Alderman Anglace will proceed to set up the CCM form.

This meeting adjourned at 7:00 p.m.

Respectfully submitted,

Kimberly Ballaro, Clerk
Board of Alderman Ethics Committee