

Letter by Virginia Carmany to be read into the minutes:

Per the below email from Jon Joslow, I set this meeting so that we could have the time and energy to address same.

"One agenda item that arose was the BOF policy with respect to the authority of the chair to decide if there is a need to retain legal non town counsel assistance and incur legal expenses without being discussed, voted and duly authorized by the members BOF as evidenced by a motion and vote recorded in the BOF minutes. We also should discuss under what circumstances additional legal council should be retained. This is a policy matter that required BOF attention so I suggest ensuring the BOF adds the policy and authority to the agenda." Jon

The following will clarify the need for non Town Attorney legal opinions, input regarding the need for a formal request and authorization process, a bit of history and materiality while raising some questions worth considering.

The Board of Finance has specific duties as documented in the Connecticut General State Statutes, elaborated in the "Handbook for Connecticut Boards of Finance" and the "Finance and Accounting Policies and Procedures Manual" adopted by the Board of Selectmen (BoS) and Board of Finance (BoF). The duties and responsibilities span several State Statutes and can be complex and unclear. Many have been given solely to the Board of Finance in our form of Government. Legal issues arise (though infrequently) and clarity can be provided by independent legal counsel. I have worked to clarify Board of Finance duties and responsibilities to the benefit of the board and the tax payers of this town. Throughout my time as chair, legal support has been a benefit, initially pro bono. In 2018 the practice was formalized by engaging an attorney from Halloran & Sage, Richard Roberts and dollars were added to the Board of Finance budget. Roberts was one of several recommended attorneys, there were no conflicts of interest found by his legal department and his billing was/is reasonable. The Board of Finance has approved that budget for 3- 4 years. The budget for the 2021/22 budget year is \$500. It does not seem appropriate that this budget item can be restricted retroactively.

The need for occasional legal counsel has been in place since I first joined the BoF in 2001. At that time it was provided by a BoF member who was a lawyer and evidenced by discussions between him and the First Selectman. Generally settled by the BoF member's legal experience, knowledge of State Statute and case study. The need grows out questions requiring clarity and/or balance between the two boards, while protecting the statutory responsibilities given to the Board of Finance, especially when more than one statute must be considered.

Part of the recent request for clarity came about because of seemingly conflicting language between CT General State Statute (CGS) 7-343 giving the right to fill vacancies on the BoF to the BoF, the use of the Town Ordinance for Creating Alternate Boards of Finance, and GCS 9 - 220 [Exhibit 1] to justify the filling of BoF alternate vacancies by the BoS and the request for the Board of Finance to vote and approve the "Handbook for Elected and Appointed Officials and Volunteers" [Exhibit 2]. The "Handbook" [Exhibit 3] was written for Commission, Committee or Board Members as stated on page 2 and also seems to be intended for the general public who might be interested in serving on a Board or Commission. It was written at a high level that precluded any specificity regarding filling of vacancies on the Board of Finance and possibly other Boards or Commissions via a foot note or other means. The information regarding vacancies implied all vacancies (full and alternate board) would be filled by the BoS though the BoF by Statute retains that right and further leaves the impression that that right is reduced to primarily consider alternate BoF members or BoS vetted candidates. This leaves an additional need for further clarity on how the Board of Finance might go about filling a vacancy if an alternate member was not a strong candidate based on a variety of criteria or as in some towns there is no alternate board.

All this was further complicated by the 4 month wait and initial BoS deliberations that seemed about to prevent a very strong qualified candidate from being considered. During this time another key finding surfaced with important implications that shed light on how vacancies must be filled when minority representation is required vs. the "Handbook". [Exhibit 4].

The "Handbook" while helpful could be more clear and accurate, especially given boards and commissions are filled with volunteers who may or may not have the time, energy or experience to evaluate the need for further research. The issued legal opinions highlight the challenges of providing accurate guidance to the boards (in this case) regarding the filling of vacancies and the need for a more detailed document.

It seems each set of questions reveal and underscore the need for further study and more complete understanding. [Exhibit 4]

Another component of the previous BoF discussion was the question of whether or not the Town Attorney can be utilized. If there is a need for adjudicating a issue between the Board and an outside entity, the Town Attorney might be the appropriate person to consult if both boards agree. But an issue arising from a lack of clarity or a difference in opinion between the BoF and another board, poses a new set of challenges as evidenced by my attempt to consult with the Town Attorney. As I mentioned before, when I called to consult with John Bennet, the Town Attorney at the time, he told me I could not speak with him without first getting approval from the First Selectman.

Now with a better understanding of checks and balances and separation of responsibilities, there are several questions that come to mind:

- * Confidentiality when the ability to contact the Town Attorney is contingent on approval from the First Selectman?
- * Even if the Town Attorney had said he would speak with me, how can he represent two boards at the same time?
- * Would both parties be represented evenly and fairly?
- * Would a higher right be given to the board generating more billable hours?
- * In this instance: How would the issue be considered and resolved if the Town Attorney was asked to respond to a request for additional clarity on the issue for which (unknown to me) he had already given an opinion?
- * Would approval have been given to pursue a more in-depth review?
- * Would the Town Attorney change an opinion already provided? [Exhibit 6].
- * And finally, isn't it beneficial to have advise from outside counsel that sheds new light on important questions?

Another concern was if the outside legal attorney was being used for some personal benefit. I hope it is clear that the benefits accrue to the Board of Finance for fulfilling the responsibilities specifically given them by Statute(s) and ultimately to the taxpayers who vote to elect the Board of Finance to represent their interests; the overall financial well being of the Town provided through the setting of fiscal policy and financial oversight.

Here are three additional open questions: Why didn't the initial State Statute and subsequent Town Ordinance have specific language giving the BoS the right to fill vacancies on the BoF alternate board once the board had been created as other State Statues and subsequent Town Ordinances do [Exhibit 6], written both before and after the BoF's ordinance for creating the alternate Board? And, What are the procedures used by a Board of Finance in a town without BoF alternates to fill vacancies? Can we adopt them?

An additional request embedded in this agenda request is that a vote be taken by the board before any authorization can be given for legal assistance. Part of the answer is a timing concern. Issues arise and need resolution in real time. In many instances an issue needs a more immediate response than allowed for with monthly regular meetings or even within the timeframe needed to set up and execute a Special Meeting. This was very much the case regarding the imminent filling of a vacancy on the BoF by the BoS which did require minority representation and was about to be based on past practices and/or a misinterpretation of statute as it was noted in the "Handbook" in item 2 on page 4.

Lastly, on what basis would the board vote to approve or disapprove the validity of any given question if the Chair has determined he/she needs assistance? How would the board judge where it might lead and what impact it might have unless there is or will be appropriate experience or legal knowledge among the members. Why would anyone say no for additional clarity?

Attachments: Exhibits sent to each member prior to the meeting.

Exhibit 1: Page 1: CGS 7-343, Ordinance Creating Alternate Members to the BoF and CGS 9-220

Exhibit 2: Page 2: Request & response to approve "Handbook for Elected and Appointed Officials and Volunteers"

Exhibit 3: Page 8: Excerpts from "Handbook for Elected and Appointed Officials and Volunteers"

Exhibit 4: Page 12: Robert's response to question of minority representation vacancy appointment

Exhibit 5: Page 14: Robert's memorandum: Filling of Vacancies on the Board of Finance

Exhibit 6: Page 17: Bennet's letter regarding filling of vacancies

Exhibit 7: Page 18: Examples of other Town Ordinances addressing filling of alternate vacancies

Subject: Re: Special BoF Meeting

From: "Jon@Joslow.com" <jon@joslow.com>

Date: 7/29/21, 5:19 PM

To: Virginia <vcarmanyruiz@comcast.net>, Richard Nygard <nygard1942@msn.com>, "Rannestad, Jennifer" <rannestad@lcsnet.com>, John OHare <johare724@gmail.com>, Michael Joplin <mwjoplin@aol.com>, "Andrew J. Gardner" <andrew@reliancewm.com>, Kris Pollock <krispollock1@gmail.com>, Michael Jordon <mjordan@aerconsulting.com>

CC: First Selectman <firstselectman@chesterct.org>, Charlene Janecek <c.janecek@aol.com>, "tenglert@whelen.com" <tenglert@whelen.com>

Welcome to the new members of the BOF! Although this is an unusual first meeting, we are cognizant of our mandate to adhere to policies, procedures at the local, state and federal level as we perform our duties as elected officials. So tonight's meeting is an example of us ensuring that we are following clear and transparent processes to help us through the challenges of fiscal administration.

Unfortunately, I cannot attend this urgent meeting but offer my input as you deliberate this evening. To that end, please read this note into the minutes at the beginning of the meeting because if read after deliberation and any vote, then it serves no purpose.

Here are my thoughts related to the first item on the agenda:

Discussion concerning potential BOF policy and procedures for use of non-town counsel for legal support and potential vote

At our last meeting the Chair of the Board of Finance discussed one or more instances of selecting and retaining non-town counsel for matters relating to BOF issues without first informing, advising or receiving authorization from its elected members. The need to deviate from using approved town counsel was not discussed with the Board of Finance and was not put on the agenda by its chair, who sets the agenda. The Chair acted solely on her own, without approval and authorization, to bypass Town Counsel and the BOF, to secure an alternative source of legal advice for the Town of Chester and at Town expense. There was neither transparency nor disclosure until the matter and conflicting attorney letters were presented at our last BOF meeting.

Recommendations:

1. The Board of Finance commits to adhering to the policies it created for all town officials and staff. To that end, it is recommended that these policies be reviewed before taking any action to ensure that the deliberation of next steps follows agreed standard procedures. The BOF spent five years updating these policies and need to be certain that we are following them as is the fiduciary responsibility of all town officials.
2. The Board of Finance will not deviate from using approved Town Counsel as its first path toward obtaining legal advice and rulings on behalf of the Town. Should there be a need to challenge a ruling or interpretation by Town Counsel, then the BOF will be informed by the Chair or appropriate Town Official, as to whether a second opinion is in the Town's best interest. The criteria, selection, approval, funding and engagement of additional legal counsel shall not be at the sole discretion of the Chair of the Board of Finance, but shall follow existing protocol of being included in a formal agenda so the entire BOF can act as one oversight and

approval body.

3. At no time shall the Chair act as the proxy for any and all BOF members, whether the BOF is in or not in session.

Sorry if this is a bit direct. While the Chair may have the best interests of the elected officials and taxpayers in mind, the BOF is and *must* operate as Board of elected officials with an elected Chair empowered to set the agenda, run its meetings and vote as a regular member with the same rights and responsibilities as all elected BOF members.

Sincerely,
Jon Joslow

On 7/23/21, 8:02 AM, "Virginia" <vcarmanyruiz@comcast.net> wrote:

Change of date to Thursday July 29th. There is a big DTC meeting on Tuesday and a BoS on Wednesday... Please respond if this date is okay with you. Thanks, Best, Virginia

On 7/22/21 5:14 PM, Virginia wrote:

> Hi all,

>

> I'd like to propose a Special Meeting next week on July 27th at 7:00
> pm to discuss the open items that arose during the last BoF meeting
> regarding legal issues.

>

> Please let me know if you can attend at this date and time. Thanks in
> advance.

>

> Best, Virginia

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>

Subject: Re: Special BoF Meeting

From: John OHare <johare724@gmail.com>

Date: 7/29/21, 5:49 PM

To: "Jon@Joslow.com" <jon@joslow.com>

CC: Virginia <vcarmanyruiz@comcast.net>, Richard Nygard <nygard1942@msn.com>, "Rannestad, Jennifer" <rannestad@lcsnet.com>, Michael Joplin <mwjoplin@aol.com>, "Andrew J. Gardner" <andrew@reliancewm.com>, Kris Pollock <krispollock1@gmail.com>, Michael Jordon <mjordan@aerconsulting.com>, First Selectman <firstselectman@chesterct.org>, Charlene Janecek <c.janecek@aol.com>, "tenglert@whelen.com" <tenglert@whelen.com>

Hi John.

I have never seen our Chairperson do anything that was not in the best interest of the town. I believe that when she obtained another legal opinion on the issue of appointments it was also in the best interests of the town. The legal opinion was based on state law and not an ordinance. Consequently I do not agree with the recommendations which you have made. I would like my opinion read into the minutes as well.

Best regards.

John O'Hare

On Thu, Jul 29, 2021 at 5:19 PM Jon@Joslow.com <jon@joslow.com> wrote:

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