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April 25, 2008

John Florek, Esq.
Chairman, Town Charter Revision Committee
Stratford Town Council
2725 Main Street
Stratford, CT 06615

Re: Actions the Ethics Commission can impose on a public official

Dear Attorney Florek:

At a recent Charter Revision Commission meeting, you requested that we research what actions the Ethics Commission (hereinafter the "Commission") can impose and, in the alternative, the maximum penalty the Town can levy against an official for an ethics violation. After researching the issue, it is our opinion that the power of the Commission is limited to investigation of ethical violations and the imposition of a \$250 fine or a referral to the State's Attorney for prosecution under the penal code. We believe that the imposition of other sanctions, as set forth, in the Stratford Town Code, Part 1, Chapter 5, Article IV, § 5-36 would be invalid if challenged.

Connecticut General Statutes § 7-148h addresses "Municipal Powers" and the establishment of an ethics commission and its powers. § 7-148h states, in relevant part:

Ethics commission; establishment and powers.

(a) Any town, city . . . may, by charter provision or ordinance, establish a board, commission, council, committee or other agency to investigate

allegations of unethical conduct, corrupting influence or illegal activities levied against any official, officer or employee of such town, city, district or borough . . . Any board, commission, council, committee or other agency established pursuant to this section may issue subpoenas or subpoenas duces tecum, enforceable upon application to the Superior Court, to compel the attendance of persons at hearings and the production of books, documents, records and papers. (Emphasis added).

Pursuant to § 7-148, the Town of Stratford has established an ethics code and commission which can be found in the Stratford Town Code, Part 1, Chapter 5, Article IV . The Town Ethics Code, §5-36A-D provides that after a finding of a violation by the ethics commission that sanctions shall be:

- (A) A recommendation by the Ethics Commission to the appropriate appointing or supervisory authority which may include removal, termination, suspension with or without pay, and/or censure. The authority affected will report within 30 days to the Commission the action taken or lack of action and the reasons therefor;
- (B) Restitution of pecuniary benefits received as a result of the violation;
- (C) A fine, which may be the maximum amount allowed by the Connecticut General Statutes; or
- (D) Referral to the State's Attorney for prosecution under the penal code, if applicable.

Based upon our review of the applicable case law and statutes, we believe that the powers of an ethics commission are limited to the investigative powers provided to it under § 7-148 and the sanctions of a \$250 fine or referral to the State's Attorney for prosecution. We find no basis for the "removal" or "restitution" provisions in either statute or caselaw.

Our conclusion is based, in large part, upon the fact that §7-148h of the statutes does not provide for anything more than an investigatory power. In this respect, case law from this jurisdiction is clear that the only powers a municipal corporation has are those which are expressly granted to it by the state. *Pepin v. Danbury*, 171 Conn. 74, 83 (1976). In the absence of an express grant of power from the state, municipalities do not have the power to legislate. *Bottone v. Town of Westport*, 209 Conn. 652, 553 A.2d 576 (1989). Delegation of authority to municipalities is narrowly construed and in determining whether a municipality has certain authority, the court does not search for a statutory *prohibition* against the exercise of such authority but, rather, for a specific statutory *grant* of authority. *Simons v. Canty*, 195 Conn. 524, 448 A.2d 1267 (1985). "The legislature has been very specific in enumerating those powers it grants to municipalities. See General Statutes Title 7." *Buonocore v. Branford*, 192 Conn. 399, 403, 471 A.2d 961 (1984). A thorough search of the Connecticut General Statutes did not reveal any legislative directive authorizing local boards of ethics to impose sanctions for local ethical violations. The power of a local ethics board is, therefore, investigatory as opposed to adjudicatory in nature.

To further illustrate this point, see C.G.S. § 1-80 in which the legislature gives the State power to establish an Office of State Ethics that shall be an independent state agency. Further, Section 1-88 explicitly gives the State Ethics Board the power to impose civil penalties as well as refer the matter to the Office of the Chief States Attorney.

In addition, we note that “When construing a statute, [a court’s] fundamental objective is to ascertain and give effect to the apparent intent of the legislature . . . In other words, to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation.” (Citation omitted; internal quotation marks omitted.) *Felician Sisters of St. Francis of Connecticut, Inc. v. Historic District Commission*, 284 Conn. 838, 847 (2008). The clear and unambiguous language of § 7-148h suggests that a local board of ethics is limited to investigation. Specifically, the statute not only uses the word “investigate” in relation to what a local ethics board can do, but also delineates its powers.

Although there is no express power for sanctions we find authorization for the imposition of a fine in C.G.S. § 7-148 (C)(10)(A). The portion of this section of the statute provides that a municipality may:

Make all lawful regulations and ordinances in furtherance of any general powers as enumerated in this section, and prescribe penalties for the violation of the same not to exceed two hundred fifty dollars, unless otherwise specifically provided by the general statutes. Such regulations and ordinances may be enforced by citations issued by designated municipal officers or employees, provided the regulations and ordinances have been designated specifically by the municipality for enforcement by citation in the same manner in which they were adopted and the designated municipal officers or employees issue a written warning providing notice of the specific violation before issuing the citation. (Emphasis added).

As stated above, Town Code § 5-36(C) states, “A fine, which may be the maximum amount allowed by the Connecticut General Statutes”. The ambiguity implied in the phrase “which may be the maximum amount” implies that there is the authority to assess a fine up to and between \$250 dollars. This runs contrary to the “specifically” language in the statute. Taking into consideration that the legislature frequently increases the maximum fine authorized under § 7-148(C)(10)(A) and, thus, the need to

continuously update the Town Code section, we suggest modifying the Town Code § 5-36(C) to read, "A fine, *which is the maximum amount allowed pursuant to Connecticut General Statutes § 7-148(C)(10)(A)*".

We find that the power of the ethics commission to make a referral to the State's Attorney for prosecution under the penal code lies emanates from the power of that office and the ability of the public to report offenses. In certain cases the State's Attorney may review a case stemming from a police investigation or complaint from the public based upon information that has been collected. The prosecutor will then review the case and decide if the case will be presented to a judge for the issuance of an arrest warrant. A prosecutor may decline to request an arrest warrant if he or she determines that the evidence collected by the police is not sufficient to prove that a crime has been committed, or to prove who committed the crime. The prosecutor also may order further investigation, either by the police, or in unusual cases, by an investigatory grand jury. We find that the procedure of providing information to the State's Attorney from the ethics commission would be no different than that information that could be provided by a private citizen.

In sum, the power of a municipality's ethics commission is limited to investigation of ethical violations and the imposition of a \$250 fine or referral to the State's Attorney for prosecution under the penal code. Absent an express grant there is no basis for the other powers set forth in § 5-36 of the Town Code.

I trust this opinion will prove helpful.

Sincerely yours,



RICHARD J. BUTURLA
STRATFORD TOWN ATTORNEY