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March 13, 2008

John Florek, Esq.  
Chairman, Town of Stratford Charter Revision Committee  
2725 Main Street  
Stratford, CT 06497

Re: Power of Investigation (§ 2.2.15)

Dear Attorney Florek:

At a Stratford Town Charter Revision Committee Meeting held on March 6, 2008, you requested that we review whether the Council, the Mayor, or both should have the power to investigate town affairs through the issuance of subpoenas. We have reviewed the applicable caselaw and our conclusion is that there is no authorization for a municipality to grant to its governing or legislative body the power to issue subpoenas.

The analysis of this issue properly begins by acknowledging that Connecticut Courts have long recognized that as a creation of the state, a municipality has no inherent powers of its own. City Council of the City of West Haven v. Hall, 180 Conn. 243 (1980). It has, moreover, generally been held that the express enumeration of powers granted to municipalities constitutes an exclusion of all other powers not expressly delegated to them. 2 McQuillin, Municipal Corporations (3d Ed. Rev. 1979) § 10.23, p. 802; See also State ex rel. Barlow v. Kaminsky, 144 Conn. 612, 620, 136 A.2d 792 (1957) ("enumeration of powers in a statute is uniformly held to forbid the things not enumerated"). In order to determine whether a municipality has the authority to enact a specific charter provision the inquiry is not whether there is a statutory prohibition

against such an enactment, but instead, is whether there is statutory authority for the enactment. Avonside, Inc. v. Zoning and Planning Comm. of Avon, 153 Conn. 232, 236 215 A.2d 409 (1965). There has never been an express legislative authorization for a municipality to grant to its governing or legislative body the power to issue subpoenas.

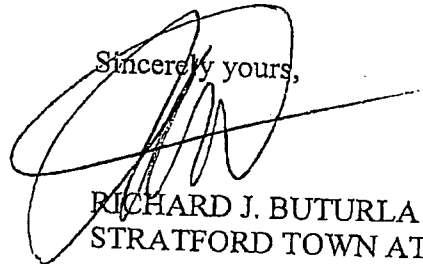
Despite the lack of an express grant of subpoena power, the Connecticut courts have recognized that a municipality has such powers as are necessary to enable it to discharge the duties and carry into effect the objects and purposes of its creation. Id. Municipalities have relied upon this provision to argue that a subpoena power exists. The Court in Hall, supra, rejected this argument finding, instead, that the applicable section of the Home Rule Act does not authorize municipality to include in its charter a provision conferring subpoena power on its governing or legislative body. Id. at 247.

In Hall, supra, Jon Hall, a reporter for the *Journal Courier* newspaper, wrote a series of articles about public lunch school programs in the New Haven area, including the program in the West Haven. Id. at 244. The articles reported that, despite its policy requiring competitive bidding procedures for all contracts greater than \$1000, West Haven had not used a competitive bidding process in contracting with the major food suppliers of its lunch program which might have resulted in a substantial savings to the city. Id. The articles also reported that an official of the West Haven School System had been employed simultaneously by the city of West Haven and by the supplier of the school lunches. Id. Following the publishing of these articles the city council of West Haven began an investigation of the public school lunch program. Id. The council eventually served the reporter with two subpoenas, one signed by the chairman of the city council and the other signed by the corporation council, commanding him to appear before the city council. The reporter refused to appear and testify before the city council. Id. at 245. The council filed suit seeking an order compelling Hall to testify before it. Id. The trial court ruled in the city's favor relying upon § 7-194 (26) of the Home Rule Act. Id. Hall subsequently appealed. Id.

The Connecticut Supreme Court, in reaching its decision, noted that the power to issue a subpoena is a great power. Id. at 249. Then, building upon that, found it remarkable that the legislature expressly granted other lesser powers such as the power to "provide for the planting, rearing and preserving of shade and ornamental trees on the streets and public grounds; to permit, regulate and prohibit games, coasting, sliding and; subject to the provisions of the General Statutes, the use of velocipedes, bicycles and tricycles, on the streets or sidewalks of a municipality" while failing to provide for a subpoena power. Id. at 249-50. The Court reasoned that the action of the legislature in precisely enumerating specific powers without mentioning a subpoena power indicates that it did not intend to grant the municipalities such a power by way of a charter adoption. Id. Accordingly, the Court found that the Home Rule Act does not permit a municipality to grant to its governing or legislative body the power to issue subpoenas. Id.

The thrust of the precedent clearly indicates that there is no authorization for any provision allowing the Town of Stratford to grant to its governing or legislative body the power to issue subpoenas. If you should have any questions or comments, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'R. Buturla', written over the typed name.

RICHARD J. BUTURLA  
STRATFORD TOWN ATTORNEY