

MAYOR
FREDERICK P. LENZ, JR.



JEF-#
CORPORATION COUNSEL
JOEL E. FREEDMAN
ASSISTANT CORPORATE
COUNSEL
THEODORE GODDARD
RONALD M. SCHWARTZ
JOHN E. SMYTH
SHERWOOD R. SPELKE
BARRY JAY BOODMAN

CITY OF STAMFORD, CONNECTICUT 06901
DEPARTMENT OF LAW

June 20, 1974

Mr. Athanasios Loter
Chairman, Board of Ethics
200 High Clear Drive
Stamford, Connecticut

Dear Mr. Loter:

You have orally requested us to rule on the present status of the Board of Ethics under Section 2-2 of the Stamford Code.

Under Section 2-2 of the Code of Ordinances, the Board of Ethics "...shall consist of three (3) members... to be appointed by the mayor and approved by vote of two-thirds (2/3) of the members of the governing body present and voting; provided, no name shall be submitted more than once. The members shall be resident electors of the municipality, and shall not all be registered members of the same political party."

Present membership on the Board of Ethics consists of Athanasios Loter, Republican, whose term expires June 30, 1975 and Richard Jones, Republican, whose term expires June 30, 1976. Maurice Buckley, Democrat, served from June 30, 1967 to June 30, 1972 when his term expired. His renomination by Mayor Wilensky did not receive the necessary two-thirds vote of the Board of Representatives at their meeting held May 7, 1973.

Based upon the foregoing, it is our opinion

(1) That the failure of the Board of Representatives to approve Maurice Buckley at its May 7, 1973 meeting effectively terminated his membership on the Board of Ethics as of June 30, 1973 since his name could not be submitted more than once; and

(2) The fact that there is now a vacancy on the Board does not impair its ability to legally function. "...although vacancies occur by death or resignation, if a majority survives or remains, there is a sufficient number to constitute a quorum, otherwise, there is not." McQuillin Corporations, Section 13.30. Trudel v. Emerson, 81 N.H. 273, 124 A. SSS. Ballard v. Charlotte 253 N. C. 484, 70 S. E. 2dS75. Such a situation is different from one where the initial third member was never appointed in the first place. Saco v. Jordan, 115 Me 278, 281, 98 A 808. It is also different from one where a charter provision or the enabling ordinance require a membership on the board or attendance in excess of a majority in order for the board to function. Gaston v. Ackerman, 6 N.J. Misc. 694, 142 A.S45.

Even though the vacancy is a Democratic one, the prohibition of the ordinance that the members shall not all be registered members of the same political party addresses itself to the entire membership of the Board. For even when the third member is appointed and approved, a quorum consisting of two members of the same political party will be able to hold meetings and take action on behalf of the Board, irrespective of the position of the third member.

Therefore, it is our opinion that the Board, the membership on which is presently only two and both of which members are Republicans, can nonetheless function pursuant to Sections 2-1 and 2-2 of the Code of Ordinances.

Because of the potential political sensitivity of the subject matter now before the Board of Ethics, involving the participation of certain Democratic members of the Board of Representatives who are employed by the Board of Education in votes on the former Board involving the budget of the latter Board, it may, as a policy matter, wish to defer further action on the matter until after the third Democratic member has been appointed by the Mayor and confirmed by the Board of Representatives. We understand that as of this date, the Mayor has submitted his nomination for this position to the

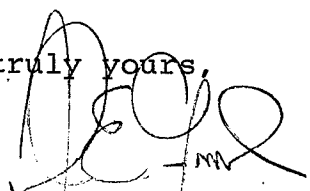
Mr. Athanasios Loter

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Board for action at its July meeting. As herebefore stated however, any decision to defer pending proceedings by the Board of Ethics would be solely within its discretion and not mandated by law.

Very truly yours,

A handwritten signature in black ink, appearing to read 'JEF', with a horizontal line underneath it.

Joel E. Freedman
Corporation Counsel

JEF/ns

CC: Mr. Richard Jones