

Mr. Kenneth Povodator, Esq.  
Acting Director of Legal Affairs  
Office of Legal Affairs  
City of Stamford  
888 Washington Blvd.  
Stamford, CT 06901

February 21, 2012

Re: Role of the Corporation Counsel in Representing the Entire Board of Representatives

Dear Attorney Povodator,

First, let me say I appreciate that you are acting as the Interim Director, and that you may not have been personally involved in this matter, so I am writing to you to express my concerns with your office, and not with you personally.

That being said, I am writing you to express my extreme displeasure with your office advising the Steering Committee not to act on a matter that I asked to be placed on the agenda of the Legislative and Rules Committee. This was effectively a veto of the matter by the executive branch of government, and prevented the members of the Steering Committee from publicly discussing the issue, or even voting to refer it to an agenda. Your actions completely circumvented the legislative process without holding any elected official accountable for failing to address the issues I have raised.

I will give you a little background so that you, and the members of the Board of Representatives, can place this in context. In August of 2011, I became very concerned that the "Leadership" of the Board of Representatives was acting as a *de facto* subcommittee of the Board, and were conducting the public's business in private without compliance with the Freedom of Information Act (FOIA). I also became concerned that they were "legislating by letter," creating a consensus of the Board through the use of emails, improperly influencing City policies, and usurping powers that belong to the entire Board of Representatives without giving each Board member the opportunity to be heard. I brought these concerns to the attention of the President of the Board of Representatives who replied that my concerns were "quite simply, completely without any basis in fact whatsoever." No other analysis or explanation was provided by the President.

I believe that one of my chief responsibilities as an elected member of the Stamford government is to comply with the FOIA, which is designed to foster public trust and confidence in government. As a result, I filed an FOIA Appeal with respect to the actions by and on behalf of the Board with respect to a letter signed by the Leadership committee's. The FOIA Appeal named the entire Board of Representatives as the Respondent.

Under the Charter, §C5-20-3, you are required to serve as the legal advisor an attorney for the Board of Representatives, and for me, as an Officer, in the FOIA Appeal as it was a

matter relating to our “official duties.” Your office appeared on behalf of the entire Board of Representatives, but refused to provide me with an attorney because your office determined that complying with the FOIA is not part of my “official duties.” No explanation was given to support your office’s conclusion.

After your office filed an appearance on behalf of the entire Board, I assumed that the matter would be placed on the Steering Committee’s agenda, where it would be referred to a standing committee before it was considered by the entire Board. I assumed your office would meet with the Board so as to advise the Board with respect to its legal rights, responsibilities and options with respect to the FOIA Appeal. This would, of course, allow Board to discuss and vote on how it collectively wished to approach the Appeal. Strangely, the FOIA Appeal never appeared on the Board’s agenda nor was ever discussed at a public hearing.

During the recent public hearing on the FOIA Appeal in Hartford last month, it became apparent that Randall M. Skigen, the Board President and Deputy Mayor, Harry Day and Mary Fedeli, the Deputy Minority Leaders, were instructing the attorney from your office as to the approach he must take on behalf of the Board with respect to the Appeal. It is possible that other members of Leadership have had some influence as to how the Board approached the Appeal, but five other members of Leadership (Representatives Deluca, Mitchell, DePina, Heaphy and Summerville), felt that they were at liberty to ignore a validly issued subpoena compelling them to attend the hearing. I have looked over the City Charter, and the Board's Rules of Orders, and I do not see any provisions that would allow the membership Leadership, or any of them, to instruct your office with respect to a matter that named the entire Board of Representatives as a Respondent.

This has led me to suspect that the Leadership of the Board of Representatives has been meeting with attorneys from your office with respect to this FOIA Appeal, without having the authority to act on behalf of the entire Board, without having those meetings publicly noticed, and without otherwise complying with the mandates of the FOIA.

In an effort to have this issue discussed at a public meeting, I sent a request to the Steering Committee (attached) seeking to have this matter assigned to one of the Board’s standing committees. At the Steering Committee meeting on February 13, 2012, the videotape indicates that the Steering Committee was “advised” by your office not to take the matter up (which was designated LR28.040 on the agenda). The matter was simply ignored. There were no votes. There was no discussion. As a result, the same eight members of Leadership that signed the August 15, 2011 letter, and who comprised half of the Steering Committee meeting on February 13, 2012, never had to vote as to whether this matter should be placed on the Legislative and Rules Committee. An essential element of our democratic process is to have our legislators make their votes in public, so they can be held accountable. By advising the Committees not to act, you deprived the public of knowing which members voted this matter down, not to mention depriving the public (and the entire Board) the answer to the underlying question; whose is controlling the Board of Representatives with respect to the FOIA Appeal?

This raises two issues.

First, on whose behalf were you acting when the Steering Committee was “advised” not to act on a matter? I am an elected member of the Board of Representatives, and as part of my official duties I asked to have a matter to be placed on an agenda. You are simultaneously acting the legal advisor for me, the Steering Committee and the entire Board. To me, the conflict of interest in advising the Committee to ignore the matter that I placed on the agenda if you are also acting as my legal advisor and attorney is obvious. What right do you have to interfere with the democratic process? If there is a matter on an agenda that should not be discussed in a public meeting, such as “pending litigation,” why didn’t you follow the requirements of the FOIA, and ask that the agenda also include an executive session? There are numerous situations where the government is involved in a “pending litigation,” and a legislative committee simultaneously goes forward with public meeting covering the matter under its own aegis. The existence of “pending litigation” does not give you the right to advise the Steering Committee to ignore my request to have a matter discussed at a public meeting.

If your office assumes the authority to advise a committee, or its chair, as its attorney not to even address a matter on an agenda, how can any member of the Board of Representatives have any matter placed on the public agenda which does not meet the approval of your Office, which is part of the executive branch of government? This is not the first time this has happened. In May of 2010, I asked that the Board of Representatives conduct hearing with respect to the charges of nepotism by an employee in the in the Personnel Division of the Office of Legal Affairs. The Chair of the Personnel Committee told me that Corporation Counsel (whose office was the subject of the charges) wanted the matter placed on the “pending agenda” while it the matter was referred to the Office of Legal Affairs to research. No research was needed, as the Charter, Classified Service Rules, and the Code or Ethics were all very clear with respect to hiring immediate family members. To my knowledge the research was never done, and as a result, the matter was on hold for over a year. When the matter did appear, I was told that the Office of Legal Affairs instructed the Chair to advise me that I could not ask certain questions of Mr. Hibsen, such as why a copy of a payroll action for within the OPM files was dated January 29, 2010, and did not contain Corporation Counsel Larobina’s signature, but the copy that was later produced by Mr. Larobina’s office showed that he signed it on January 28, 2010. By asking the Personnel Committee to place a matter on a pending agenda, and to control the questions I could ask, the matter was effectively swept under the rug by your Office.

Which brings me to my second concern, how are the members of the Board of Representatives who are not part of “Leadership” ever going to be advised as to the Board’s rights, responsibilities and options with respect to the FOIA Appeal if your office effectively vetoes matters before they can be placed on the public agenda? We were all elected to the same Board, and our constituents deserve equal representation in City Government, and I am not aware of any provisions that allows Leadership to control the approach to the FOIA Appeal to the exclusion of the other members.

I asked that simple questions be placed on an agenda to be publicly discussed, including who is making decisions for the Board with respect to the FOIA Appeal? What other avenues do I have to obtain an answer to this question? And if the answer that is given does not satisfy the majority of the members of the Board of Representatives, how can they express their

dissatisfaction if your office advises the Steering Committee not to even discuss placing a matter on an agenda for a public meeting? Doesn't this effectively insulate the Leadership and your office from any public scrutiny and legislative oversight? Don't you see the irony in that the Leadership may be asking your office to argue that they are not a de facto subcommittee, when you know that such a request is proof positive that they are? And if the Leadership is not controlling the approach taken by your office with respect to the FOIA Appeal, don't you see the benefit from explaining that in public?

I know that I am may be only a single member of the Board of Representatives, but I have heard a great deal of concern about these matters from a broad spectrum of Stamford residents, constituents of mine, and many others. Not surprisingly, this matter has become of extreme concern to many of the to the citizens of Stamford. Therefore, I respectfully request that you appear before the Board and provide us a report with respect the issues I have raised in this letter and in the request to the Steering Committee.

A handwritten signature in cursive script that reads "Sal Gabriele". The signature is written in black ink and is positioned above a horizontal line.

Sal Gabriele  
Board of Rep 16 District

CC:

Randall Skigen President and Deputy Mayor  
Annie Summerville Clerk of the Board  
Elaine Mitchell Majority Leader  
Robert "Gabe" Deluca Minority Leader  
Gloria Depina Deputy Majority Leaders  
Eileen Heaphy Deputy Majority Leaders  
Harry Day Minority Leader  
Mary Fedeli Minority Leader