

**STATEMENT BY STAMFORD BOARD OF ETHICS INVESTIGATING PANEL**  
**RE: COMPLAINT OF MICHAEL SCACCO AGAINST SALVATORE GABRIELE**

The Investigating Panel of the City of Stamford Board of Ethics charged with investigating and presenting the ethics complaint of Michael Scacco against Salvatore Gabriele hereby recommends that the Hearing Panel of the Board of Ethics dismiss the complaint. The reasons for this recommendation are set forth below.

**BACKGROUND**

On May 20, 2010, Michael A. Scacco filed a complaint to the Board of Ethics against three respondents: Joseph Tarzia, Chairperson of the Board of Finance; Robert Kolenberg, a member of the Board of Finance; and Salvatore Gabriele, a member of the Board of Representatives.

On September 17, 2010, the Investigating Panel issued a Finding of Probable Cause, in which we found (with one member dissenting from certain portions of our determination) that there was probable cause to believe that all three respondents had violated certain provisions of the Stamford Code of Ethics.

The charges against Mr. Tarzia were dismissed by agreement, and the charge that Mr. Kolenberg and Mr. Gabriele violated Section 19-2B of the Code of Ethics was dismissed by the Hearing Panel. All that now remains for final determination is the charge that Mr. Gabriele violated Section 19-5B of the Code of Ethics, which prohibits public officials from granting “special

consideration, treatment or advantage to any person beyond that which is generally available to other citizens of the City.”

Our investigation of the complaint included interviews with the complainant and other witnesses, whom the panel found to be credible, as well as a comprehensive review of documents produced by the parties and interviews with the respondents and their counsel. The investigation led us to conclude that Mr. Scacco’s complaint was not specious and that there was probable cause to believe that Mr. Gabriele, acting in concert with Mr. Tarzia, had made persistent, unwarranted, burdensome and ill-motivated requests for information from and about Mr. Scacco and his department, in an effort to interfere with and/or retaliate against Mr. Scacco for Mr. Scacco’s discipline of an employee who was a personal friend and political ally of Mr. Gabriele and Mr. Tarzia. In fairness, we must acknowledge that Mr. Gabriele has always maintained that his requests for information were not retaliatory, but were legitimate inquiries that he undertook in order to investigate allegations of corruption and mismanagement. The majority of the Investigating Panel found that the available evidence was sufficient to overcome Mr. Gabriele’s contentions in this regard..

## **REASONS FOR DISMISSAL**

Although this panel stands by its finding of probable cause, we believe that the Board of Ethics should conduct no further proceedings on this complaint.

“Probable cause” is a relatively low standard of proof. According to the Code of Ethics, “there must be facts and circumstances within the Investigating Board members’ knowledge, and of which they have trustworthy information, sufficient to justify the belief of a reasonable person that a violation of the Code of Ethics has occurred.” Under Connecticut law, probable cause may exist even if the evidence does not establish that a belief is “more likely true than false.” The Code’s requirement that the Board of Ethics make a determination of probable cause provides a screening mechanism to weed out ethics complaints that lack sufficient merit to proceed further.

However, the standard of proof required for the Hearing Panel to determine that a violation of the Ethics Code has actually occurred is considerably more exacting than the probable cause standard, and even more demanding than the “more probable than not” standard usually applicable in civil proceedings. The Hearing Panel must find a violation by “clear and convincing” evidence, which means, according to the Code, that the evidence “must indicate to [the Hearing Panel] that the probability that the respondent has committed a violation is *substantially greater* than the probability he or she has not.” (Emphasis added.) There are significant factual disputes that the Hearing Panel will be required to resolve if the case goes forward, including the issue of Mr. Gabriele’s motivation, and we cannot say that we are

convinced that the evidence of an improper motivation on his part satisfies the “clear and convincing” standard.

The case also presents significant legal issues arising from Mr. Gabriele’s assertion of legislative immunity and First Amendment protection for his actions. Whether or not Mr. Gabriele’s positions are correct, these issues are likely to result in costly and protracted legal proceedings. The City will be forced to expend very significant financial resources to pursue this matter not only at the Board of Ethics level, but likely in court as well. Particularly during a time of budgetary belt-tightening in City government, and in view of the other issues we discuss herein, we question whether such an expenditure of the City’s scarce resources on this matter is necessary or appropriate.

Finally and most significantly, during the past several months this panel encouraged the complainant and the respondent to discuss a resolution of the complaint, and they have in fact engaged in a voluntary and confidential mediation proceeding. Mr. Scacco notified the panel approximately six weeks ago that he was satisfied with the outcome of those discussions, and he requested that his complaint as to Mr. Gabriele be withdrawn. This panel believes it is important to respect Mr. Scacco’s desire to withdraw his complaint and to show deference to the mediation process in which the panel encouraged the parties to participate.

Furthermore, we believe that the proceedings to date on the complaints of Tania Barnes and Mr. Scacco have brought renewed public attention to a fundamental goal of our Ethics Code: that public officials should not abuse the authority of their offices to obtain special treatment or to

provide benefits for themselves, their friends or allies. Recognition has been given to the principle that the administration of municipal operations must be effectively insulated from political interference. It would be better, we think, for the City and the individuals involved in this matter to look forward rather than to continue to focus on past accusations. In short, we believe that the City's interest has been adequately vindicated, and the benefit to be gained from further proceedings - - even if they were to result in a finding of a violation of the Ethics Code by Mr. Gabriele - - does not justify the expenditure of resources that would be required. For all of the above reasons, the Investigating Panel has concluded that dismissal of the complaint is the most prudent course at this time.

In the spirit of looking forward, however, the members of this panel feel that we would be remiss if we did not take this opportunity to urge the Board of Representatives to set an example for other legislative and quasi-legislative bodies in City government by establishing clear standards, protocols and procedures for investigations of the operations of City departments, in order to prevent individual representatives from using or appearing to use the authority of their offices to engage in personally or politically motivated campaigns of harassment and/or retaliation. Additionally, we believe that the Board of Representatives should explicitly remove the cloak of legislative immunity from its members with respect to proceedings by the Board of Ethics, so that there can be no question in the future that members of the Board of Representatives are bound by the Code just as other public officials are. Finally, we respectfully request that the Board of Representatives give favorable consideration to the various recommendations contained in the Board of Ethics' annual advisory report, submitted on June 1, 2011.

Dated: July 12, 2011.

Respectfully submitted,

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