

MINUTES OF HEARING OF
TRUMBULL ETHICS COMMISSION
August 25, 2010

The meeting convened at 7:09 p.m. in the Trumbull Council Chambers. Present were regular Members, Attorney Thomas E. Lee, Chairman, Attorney Eric Gross, Vice-Chairman, Attorney Martin McCann, Secretary, Dr. Frank Scifo, and Alternate Members, Attorney Amy Todisco and Attorney John Varrone.

The meeting began by correcting the minutes of the meeting of July 28, 2010 to indicate that the moving party to accept the complaints against Mary Moran and Timothy Herbst was Martin McCann and seconded by Eric Gross and not vice-versa. In all other respects the Minutes were accepted unanimously.

The meeting continued with Attorney Lee responding to a letter request from Attorney Michael Lynch, attorney for First Selectman Herbst, that he recuse himself and explaining why he did not have to recuse himself, in that he resigned his position as a Member of the Trumbull Veteran's Advisory Council in the summer of 1985, as he recalled. Attorney Lee went on to explain that the letter he gave to Mr. Herbst on July 21, 2010, which is made a part of this meeting record, was merely to memorialize the fact of his resignation in 1985. Notwithstanding Attorney Lee's refusal to recuse himself, Attorney Lynch then went on to file another Motion to Disqualify Attorney Lee. Attorney Lee, once again, explained to Attorney Lynch that he had not complied with Section 1-23 of the Connecticut Practice Book. Although not controlling, as explained by Attorney Lee, it was an indication that Motions to Disqualify a Judicial Authority should be given at least ten days prior to a matter, contain an affidavit as to the facts giving rise to the claim for disqualification and contain a certification by the moving attorney that it is made in good faith. All of the above were non-existent in both applications to recuse/disqualify the Chairman. This motion was denied.

The hearing on Complaint #1-2010 began with the Complainant, Tracy Vonick. The Respondents, First Selectman Timothy Herbst and Tax Collector, Mary Moran, were both present. A record of the various Exhibits has been made under separate cover and is on file with the Town Clerk, as well as a recording of the hearing. Mr. Herbst, Mrs. Moran and Mr. Vonick were sworn in based upon the indication of the Complainant and the Respondents that there would be no other witnesses. Mr. Vonick made his statement and answered some questions from Attorney Lynch and then answered and responded to questions by the Members of the Commission.

Upon Mr. Vonick's finishing, an opportunity was made for further examination by Attorney Lynch on behalf of Mr. Herbst, but there were no questions. Mrs. Moran was not represented by counsel and had no questions for Mr. Vonick.

Mrs. Moran and Mr. Herbst had decided at the commencement of the proceeding that subsequent to Mr. Vonick, Mr. Herbst would go first in presenting his case. Mr. Herbst testified that he did not know, at the time of his appointment of Mrs. Moran, that there was a section of the Town Charter which indicated that an appointed employee should not, except in certain exceptional cases, also hold a seat for an appointed position, such as Police Commissioner.

Later in the proceeding, Mrs. Moran also testified that she did not know this. Mr. Herbst indicated that he first became aware of this claim some time around June 1, 2010 and he took immediate steps to obtain a legal opinion from the Town Counsel on this issue. Mr. Herbst testified that the Town Attorney did not provide him with an opinion letter prior to the complaint being filed on July 16, 2010.

Mr. Vonick had no questions of Mr. Herbst and, in fact, left the meeting to go to his place of business. He was excused. The Members of the Commission questioned Mr. Herbst.

Mrs. Moran had no questions of Mr. Herbst. Recognizing that the Chief of Police, Thomas Kiely, and Assistant Chief Michael Harry were in the audience, the Chairman called upon them and asked if they cared to participate at this point. Chief Kiely came forward with a letter, which is part of the record, indicating the wonderful performance that Mrs. Moran had provided to the Police Department over the years. Assistant Chief Harry also verbalized his appreciation to Mrs. Moran for her years of efforts on behalf of the Town as a Member of the Police Commission.

Mrs. Moran made a statement that she did not know that there was a violation of the Charter in holding two positions as Tax Collector and Police Commissioner. She further indicated that she determined that the best course of action for her would be to resign, which she did on July 29, 2010. This was two days after the Ethics Commission accepted the complaint and scheduled this hearing of August 25, 2010.

There were no questions for Mrs. Moran by Attorney Lynch, but there were some questions by the Commission, which she answered. Following that, there was a short recess. Upon reconvening, Attorney Lynch was given an opportunity to sum up, which he did, and presented a Motion to Dismiss the Complaint for various reasons. A copy of the Motion to Dismiss the Complaint is marked as one of the exhibits in possession of the Town Clerk.

Following his presentation, Attorney Lynch answered questions from the Members of the Commission regarding various subjects including State Statute and Case Law.

Mrs. Moran had left the hearing and had been excused prior to Attorney Lynch's summation. Mrs. Moran and Mr. Herbst, at that time, indicated that they desired that any deliberation on the complaint be held by the Commission in open session and not in executive session.

Consequently, the Commission discussed the matter of the complaint in open session. When the discussion ended a motion was made and seconded to deny the Motion to Dismiss filed by Attorney Lynch. This motion was unanimously passed.

Attorney Varrone, as an alternate, was to vote, by prior agreement with Attorney Todisco, on the complaint as it referred to Mr. Herbst and Attorney Todisco would vote on the complaint against Mrs. Moran. Attorney Varrone made a motion, which was seconded, to dismiss the complaint as to Mr. Herbst. There was no further discussion and the motion was unanimously passed and the complaint was dismissed as to Mr. Herbst. Attorney Todisco made a motion to dismiss the complaint as to Mrs. Moran, which was seconded, and there was no further discussion and the motion was unanimously passed and the complaint was dismissed as to Mrs. Moran, also.

At approximately 10:15 p.m., there being no further business before the Commission, a motion was made to adjourn, which was seconded and unanimously passed.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'T. Lee', written in a cursive style.

Thomas E. Lee
Chairman