

Mary L. Stanton

From: Town of Mansfield [webmaster@mansfieldct.org]
Sent: Tuesday, September 28, 2010 3:56 PM
To: Town Employees
Subject: Town Manager's Report

**Town Manager's Office
Town of Mansfield**

Memo

To: Town Council
From: Matt Hart, Town Manager
CC: Town Employees
Date: September 27, 2010
Re: Town Manager's Report

Below please find a report regarding various items of interest to the Town Council, staff and the community:

Council Business/Items of Interest

- *Regional School District # 19 Project Referendum* - On Tuesday, September 28, 2010, Regional School District #19 will conduct a referendum on the proposed renovation of the physical education/athletic facilities at E.O. Smith High School. The polling place for all Mansfield voters is at the Audrey P. Beck Building (Town Hall), 4 South Eagleville Road, Mansfield, CT. Voting will take place between the hours of 6:00 AM to 8:00 PM.

Departmental/Division News

- *Human Services*
 - The Mansfield Senior Center and the police and fire departments are partnering with People's United Bank to form a local chapter of TRIAD. TRIAD is a national organization that brings seniors, public safety officials and local businesses together to focus on crime and safety issues that impact seniors. A TRIAD Kick-Off Ceremony will be held at the Mansfield Senior Center on Wednesday, October 20 at 12:30 PM, and all Town Council members are invited to attend.
- *Mansfield Public Library*
 - Mansfield Public Library staff has not received any complaints regarding the recent change to library hours, which were adjusted to facilitate the return of some key popular programs such as Toddler Time. Toddler Time attendance has averaged 77 for the first three weeks and many parents have expressed their appreciation for the return of the program.
- *Parks and Recreation*
 - The kayak rental program has been very popular over the summer and the kayaks will continue to be available through the end of October. The fee to rent a kayak is \$5 per day - the rental program is made available through a grant from Healthy Eating, Active Living, administered by the Eastern Highland Health District (EHHD).
 - David Kloss led the 6th Annual Father/Daughter Overnight Backpacking Trip September 18-19. Five people participated this year and they had a great time. Our thanks to David for leading this fine event.

- There are several special events happening at the Community Center in October:
 - Parent/kids night out - October 2
 - Columbus Day - October 11 (free to residents from noon-3 PM)
 - Family Fun Night - October 16
 - Member appreciation week - October 25-31
 - Town Employee Health & Wellness Day - October 28
 - Annual Halloween Party - October 30
- *Town Clerk's Office*
 - Mary Stanton received her Town Clerk Certification from the Secretary of the State at the Town Clerk conference on September 16th. Congratulations for all your hard work, Mary!
- *Mansfield Downtown Partnership/Town Manager's Office*
 - On September 17, we hosted a delegation from Amherst, MA to discuss our Storrs Center project, as Amherst is contemplating a development project with some similar components. We had a good session, which included a tour of the Storrs Center project area and our Community Center. I would like to thank Cynthia van Zelm, Greg Padick, Curt Vincente and Jay O'Keefe for their time and assistance - the feedback that I received from the Amherst contingent was very positive

Major Projects and Initiatives

- *Mansfield Downtown Partnership, Storrs Center Project* - Next Thursday, October 7, the Downtown Partnership will host an update on the Storrs Center project. At 6:00 PM on Wednesday, October 6, I would like to schedule a special meeting with the Council, as well as representatives from master developer LeylandAlliance and their partner Education Realty Trust, to discuss commercial and financial information provided in confidence related to the developer's business plan for the Storrs Center project.
- *Police Services Study* - Last week we initiated our police services study. Amy Paul from Management Partners and Craig Fraser from PERF met with the steering committee and conducted a number of interviews with councilors and other key stakeholders. Ms. Paul and Mr. Fraser will be back in town on October 25-26 to conduct focus groups and to meet with the Committee of Community Quality of Life and the Mansfield Community-Campus Partnership. I will keep the Council informed as we move closer to that date.

Special Events

- *Mansfield Public Library*
 - Felicia Ortnier, a master wildlife conservationist from the Connecticut Department of Environmental Protection, will present an informational program on black bears in Connecticut on Tuesday, September 28th at 7:00 PM in the Buchanan Auditorium. With the populations of black bears increasing throughout our state, Felicia hopes that "through outreach and education these magnificent creatures will become better understood, [and] we will learn to respect them instead of fear them..." This program is free and open to the public; light refreshments will be served.
 - Please join us at The Friends of the Mansfield Library annual potluck dinner and evening performance on Friday, October 1, 2010 at the Mansfield Public Library. The potluck dinner starts at 5:30; the evening performance begins at 7:00 in the Buchanan Auditorium. Please register for the potluck dinner and bring a dish to share; forms are available on our website or in the library. The performer this year is the library's own talented storyteller Judy Stoughton. Long before the Internet, TV and radio, stories were told, and Judy keeps this oral tradition alive. You do not have to be a resident of Mansfield to be a member of the Friends of the Mansfield Library. Money received from the Friends' book sales and other fundraising efforts is used to purchase materials and services. Our collection and programming would not be as comprehensive and dynamic as it is without their help. For additional information contact the library at 860.423.2501.
 - The Friends of the Mansfield Library are trying to recruit new and younger members. They are having an additional Book Sale, October 23 and 24, to sell an overload of donated

books. The sale will be limited to books and the space available in the Buchanan Auditorium.

- *Farm-to-Table* - On Tuesday, September 28, our local CHART (Community Health Action Response Team) is sponsoring a Farm-to-Table Dinner Event at the Hole in the Wall Gang Camp, followed by a presentation by Dr. David Katz on "Feet, Forks, and the Fate of our Children." Several town staff are members of the CHART, and the event is being co-sponsored by Mansfield Advocates for Children and the Mansfield League of Women Voters. Tickets for the event are still available, and may be obtained tomorrow morning by contacting the Eastern Highlands Health District.

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Upcoming Meetings*

- Traffic Authority, September 28, 2010, 10:30 AM, Conference Room B, Audrey P. Beck Municipal Building
- Energy Education Team, September 28, 2010, 7:00 PM, Conference Room B, Audrey P. Beck Municipal Building
- Regulatory Review Committee, September 29, 2010, 1:00 PM, Conference Room B, Audrey P. Beck Municipal Building
- Regulatory Review Committee, October 1, 2010, 2:00 PM, Conference Room C, Audrey P. Beck Municipal Building
- Beautification Committee, October 4, 2010, 7:00 PM, Conference Room C, Audrey P. Beck Municipal Building
- Committee on Committees, October 4, 2010, 7:00 PM, Conference Room B, Audrey P. Beck Municipal Building
- IWA/PZC, October 4, 2010, 7:00 PM, Council Chambers, Audrey P. Beck Municipal Building
- Agriculture Committee, October 5, 2010, 7:30 PM, Conference Room B, Audrey P. Beck Municipal Building
- Mansfield Advocates for Children, October 6, 2010, 5:00 PM, Council Chambers, Audrey P. Beck Municipal Building
- Special Town Council Meeting, October 6, 2010, 6:00 PM, Community Room, Mansfield Community Center
- Mansfield Downtown Partnership Board of Directors, October 7, 2010, 4:00 PM, Mansfield Downtown Partnership Office
- Ethics Board, October 7, 2010, 4:30 PM, Conference Room B, Audrey P. Beck Municipal Building
- Community Quality of Life Committee, October 7, 2010, 7:30 PM, Council Chambers, Audrey P. Beck Municipal Building
- Housing Code Board of Appeals, October 12, 2010, 5:00PM, Conference Room C, Audrey P. Beck Municipal Building
- Historic District Commission, October 12, 2010, 8:00PM, Conference Room B, Audrey P. Beck Municipal Building
- Town Council, October 12, 2010, 7:30PM, Council Chambers, Audrey P. Beck Municipal Building

**Meeting dates/times are subject to change. Please view the [Town Calendar](#) or contact the Town Clerk's Office at 429-3302 for a complete and up-to-date listing of committee meetings.*

----- Original Message -----

From: Robert Wechsler

To: Mike Sikoski

Cc: Carla Miller

Sent: Thursday, September 16, 2010 8:05 AM

Subject: Re: Opinion

Dear Mike:

Legally, there's nothing wrong with this, because voting in a town meeting is like voting in an election, where there is nothing wrong for voting for yourself, your spouse, etc.

Ethically, I think there's a problem when town employees only show up at town meetings to vote for things to be given to or done for them. There's also a problem when an administration insists that town employees show up at town meetings and vote for the administration, making it very difficult to oppose it.

Politically, the way to deal with this problem is to either get people to go to town meetings or, if they don't, change to a different form of government, either a council-manager, mayor-council, or representative town meeting government, via charter revision. A town where the fire department can control a vote is not really a town meeting town.

I hope this is helpful to you,

Robert Wechsler

Hi Last Oct. you were extremely helpful in giving me your opinion on a concern, I am wondering if I could impose on you again.

Recently the town of Mansfield CT had a town meeting to approve certain expenditures. The town meeting was required as per our town charter. One of the major expenditures was for work to be done on two pieces of fire apparatus. I believe this work will be done by the fire dept personnel, most likely requiring

overtime hours. This meeting was attended by mostly fire dept employees and their families. They all voted to approve this expenditure and it was approved. They did have rights as residents to vote on budget items, My question is was it ethical for them to vote for that expenditure, as they had both personal and financial interest.

Thanks Mike Sikoski

Local Government Attorneys

There is nothing more important in local government ethics than timely, independent, professional ethics advice. And there is no bigger problem in local government ethics than poor ethics advice, especially that given by local government attorneys who (1) do not have a full understanding of government ethics, especially the fact that its rules are minimum requirements, which means that a strict interpretation of the language is inappropriate in providing ethics advice, (2) are political appointees and/or people with an ongoing relationship with the official, and will therefore be viewed as helping the official get away with possibly unethical conduct, and/or (3) act as if they are representing the official rather than the position or the agency or the local government.

No bigger problem? Isn't that an exaggeration? No, I don't think it is. I rarely read about a serious local government ethics matter where there has not been some sort of advice from a local government attorney. And the norm is that the advice is legal rather than ethical, based on the strictest possible interpretation of ethics code language rather than furthering the goals of government ethics and considering the appearance of impropriety. Sometimes the advice is simply wrong.

The result of such advice often is that the official has a defense against not only ethics enforcement, but also against being pilloried by the press: "I just followed legal advice."

And the government attorney? Rarely does anything happen to the government attorney. He interpreted the ethics code the way he thought it should be interpreted. At worst, he made a mistake.

Poor ethics advice gives ethical misconduct a free ride. What can be done about this?

Government Attorney Ethics Advice Is Not a Defense

Back in 2007, I wrote [a blog post](#) about a new California Supreme Court opinion finding that a government official cannot use a government attorney's advice as a defense against criminal prosecution for conflict of interest. Please read that post. I won't repeat most of what I said there.

Warning Officials Regarding Government Attorney Ethics Advice

What brought me back to this important topic is something I came across while researching [an ethics code](#) [and a blog post](#). At the very end of the Florida Commission on Ethics' [2007 annual report](#) is the following recommendation to the state legislature: Over the past several years, the Commission has reviewed situations where local public officials acted on erroneous advice from their local government attorneys. The Commission is very concerned that officials may believe that they can rely on legal advice about their obligations under the ethics laws even though the attorney's client is the governmental agency and not the individual public official. To make this as clear as possible to agency officials and employees, the Commission proposes that the law require a local government attorney to warn the official or employee that one may be penalized even if relying on the advice of the local government attorney on an ethics matter.

The EC's assumption is that relying on the advice of a local government attorney is not a defense (and this is the position taken in a [2007 ethics opinion](#) in a Florida ethics matter: "Advice of counsel, when based on a proper statement of the facts, as this was, is not necessarily a complete defense in this case."). It's interesting that the only specific reason given for this is the fact that the government attorney's client is not the individual official, but the agency. But the problem is not that government attorneys who give poor advice are representing the agency.

Poor advice usually comes from too strictly interpreting ethics laws in order to tell an official her conduct is not clearly illegal. It's in the agency's interest to make the most liberal interpretation possible of ethics laws and criminal laws dealing with conflicts of interest, in order to prevent any possible ethics violations and even appearances of impropriety. Therefore, the Florida EC's view of the problem is wrong, even though its proposed solution is a good one.

The better argument would be that a government attorney does not represent an official, period, especially with respect to dealing with conflicts of interest. A warning might be a decent solution, but even better would be these words from a local government attorney, "I cannot give you ethics advice. You will have to talk with the city's ethics officer." But that would mean that cities would have to hire an ethics officer or put someone under contract to work on a part-time basis to provide independent ethics advice to city officials.

The question is, is it in the interest of a local government to give quality ethics advice to its officials, which could be trusted by everyone, in order to prevent unethical conduct and improve public

trust in the government? If it is, a warning is not enough, and the hiring of an independent ethics officer would be the solution.

The Institute for Local Government Approach

A June 2007 article from an [Institute for Local Government](#) newsletter for public officials presents this matter much more completely and thoughtfully (the Institute is run by the League of California Cities and the CA State Association of Counties).

It is important to keep in mind, though, that an agency attorney's client is the agency, not individual decision-makers in an agency. Any advice she gives to help individual public officials avoid violations of the law are designed to protect the agency as a whole. Individual officials do not enjoy an attorney-client relationship with the agency's attorney (and conversations with individual officials are not necessarily protected by the attorney-client privilege) because the attorney's client is the agency itself. ... city attorneys encourage each other to resist pressure to be "creative" coming up with questionable legal theories in an effort to provide cover for public officials who want to engage in activity that the attorney believes is unlawful. Nor does it matter that no one is likely to either find out about the situation or challenge it.

I love the part about local government attorneys resisting pressure to be "creative" in order to protect officials. This kind of creativity, common to lawyers representing private clients, has no place in a government law office, but especially not with respect to ethics matters. Why this is so becomes clear from the article's discussion of the reasoning behind the California Supreme Court decision I referred to early in this blog post:

A unanimous court bluntly observed that public officials are trustees and that it is wrong for trustees to engage in self-dealing. As a result, the court concluded it would not allow officials to defend themselves by claiming they relied on their agency attorney's advice.

In other words, government officials, as trustees for the public, should not be looking for creative ways to undermine the public trust. I would go a step beyond the California decision: government officials should be told not to be involved in self-dealing in any way, no matter how poorly the ethics code is written (the Florida [conflict of interest provision](#) (Click "Ethics Laws," then Ch. 112, then go to §112.3143), for example, is pretty bad). An official should not be involved in self-dealing even when it is in a gray area, such as indirect benefits, that most ethics codes do not expressly cover (see [my blog post on indirect benefits](#)). When it comes to advice to someone acting as a trustee for the public, the language of an ethics code is only the beginning, not the end.

The Solution to This Problem

There are certainly many good and honest local government attorneys who give ethics advice as good as or better than the average independent ethics officer's. They would make excellent ethics officers, but as government attorneys their advice is suspect. In addition, giving such advice puts them in an awkward position, because they should tell the official (1) that they are not representing the official, but rather the agency, (2) that there is no attorney-client privilege or confidentiality, and (3) that following the advice is not a defense (in court, before an ethics commission, or to the public).

An independent ethics officer can, on the other hand, give advice to the official, not as a lawyer representing her, but as a government ethics professional providing advice (which is, in fact, the way I give advice when it is requested). And following the ethics officer's advice can, if it is made part of the ethics code, be used as a defense (see [California Model Code §101.2](#)). Even assuming the best of the local government attorney, this solution seems to be better for everyone, including the public. Assuming the worst, and everything in between, the solution is far better for everyone. And yet it is a rare solution to this problem. Ask yourself why.

See the long [list of City Ethics blog posts relating to local government attorneys](#), and the much shorter [list of blog posts relating to ethics officers](#).

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