

Tammy Hodgman

From: Barry A. Tibbetts
Sent: Wednesday, November 1, 2023 3:11 PM
To: Tammy Hodgman
Cc: Barry A. Tibbetts
Subject: Fwd: Dave Nadeau - Ethics Complaint. FOR AGENDA CORRESPONDENCE

Begin forwarded message:

From: "Robert J. Burns" <rjburns@windhammaine.us>
Subject: **FW: Dave Nadeau - Ethics Complaint**
Date: October 23, 2023 at 2:50:05 PM EDT
To: TownCouncil <TownCouncil@windhammaine.us>
Cc: "Barry A. Tibbetts" <batibbetts@windhammaine.us>

Councilors,

Attorney Brandwein's email explanation.

Thanks,

Robert Burns, PE

Assistant Town Manager | rjburns@windhammaine.us
Town of Windham | Office of the Town Manager
8 School Road | Windham, ME 04062 | www.windhammaine.us
Ph. 207.892.1907 Ext. 1129 | Fax 207.892-1910

From: Zachary B. Brandwein <zbrandwein@bernsteinshur.com>
Sent: Monday, October 23, 2023 10:30 AM
To: Robert J. Burns <rjburns@windhammaine.us>
Cc: Barry A. Tibbetts <batibbetts@windhammaine.us>
Subject: RE: Dave Nadeau - Ethics Complaint

Bob:

Good morning. I reviewed the additional, attached, emails regarding Councilor Nadeau's use of the Town email address. The relevant section of the Town's Code of Ethics is its "Political Standards of Conduct," which provides:

No Town official may use his/her official authority or position for the purposes of influencing or interfering with or affecting the results of any election, nor shall he/she solicit funds or contributions or accept or receive funds or contributions from Town employees for political purposes. No Town official may distribute pamphlets/handbills while he or she is performing their official functions and duties with the Town. Nothing herein shall be construed to prohibit any Town official from participating in the political process in their capacity as private citizens. Acceptable conduct would allow endorsements of a candidate, without the use of an official

title. "I, John Doe, support Jim Smith for Council", not "as John Doe, Board member, I support Jim Smith for Council".

It is my analysis that these emails – although probably not best practice – do not rise to the level of a violation of the Code of Ethics. The Code provides that “[a]cceptable conduct would allow endorsements of a candidate, without the use of an official title.” The Code’s focus is on the content of the communication rather than its origin. Although the emails originate from Councilor Nadeau’s Town email address, they only ask the recipients to consider supporting Ms. Giovoni for the School Board position. The emails do not use such phrases as, “I, Councilor Nadeau, am supporting Ms. Govoni” or “as a member of the Town Council, I am requesting your support for Ms. Govoni.” Those phrases would be a clear violation of the Code, but because they are not used here, I cannot say that the emails constitute a violation.

I am happy to discuss further. Thank you very much.

Zack

Zachary B. Brandwein

he/him/his pronouns

Attorney

207 228-7371 direct
207 774-1200 main
818 484-6689 mobile
207 774-1127 fax
[Online Payment](#)
[LinkedIn](#) | [Twitter](#)

BERNSTEINSHUR

100 Middle Street PO Box 9729 [Portland, ME 04104-5029](#) | [Manchester, NH](#) | [Augusta, ME](#) | [bernsteinshur.com](#)

Confidentiality notice: This message is intended only for the person to whom addressed in the text above and may contain privileged or confidential information. If you are not that person, any use of this message is prohibited. We request that you notify us by reply to this message, and then delete all copies of this message including any contained in your reply. Thank you.

From: Robert J. Burns <rjburns@windhammaine.us>

Sent: Friday, October 20, 2023 3:11 PM

To: Zachary B. Brandwein <zbrandwein@bernsteinshur.com>

Subject: Fwd: Dave Nadeau - Ethics Complaint

EXTERNAL EMAIL

Zach,

FYR and comment.

Thank you,

Bob Burns

Sent from my iPad

Begin forwarded message:

From: William Reiner <williamreiner@windhammaine.us>

Date: October 20, 2023 at 10:01:07 AM EDT

To: "Barry A. Tibbetts" <batibbetts@windhammaine.us>, "Robert J. Burns" <rjburns@windhammaine.us>, Mark Morrison <markmorrison@windhammaine.us>
Subject: Re: Dave Nadeau - Ethics Complaint

Just curious if all the emails in the FOAA that shows Dave asking for consideration for Marge were reviewed? I found 4 on a quick review but the reply from legal seems to only indicate that 2 emails were reviewed. Yes one stated that they were already supporting Marge but the other 3 do not. Sorry I don't agree with legal's interpretation, if someone asks for a candidate to be considered and has a signature line with their title, the two go together as it is not a private individual asking for consideration.

I think it is a bit of a reach to say that a citizen that receives an email or a reply to a question, that has a request for candidate consideration in the body of text, and signed with reference to an official title of the sender, that the citizen would not think it was an endorsement from the person of title. The use of title delineates it from that of a private citizen request of consideration.

Attached are the four I located in the FOAA

Thanks. Bill

William Reiner
Windham Town Council - West District
21 Ursula Ave
Windham ME, 04062
201-294-7390
williamreiner@windhammaine.us

On Oct 19, 2023, at 11:31, Barry A. Tibbetts <batibbetts@windhammaine.us> wrote:

Hello Ken,

On September 29th, you sent in an email with questions on potential ethics violations, in order to provide an answer to your questions/email council leadership along with staff felt getting a third party review of the complaint sooner than later would be more appropriate. The Town has used Zack Brandwein, Atty. of Bernstein Shur law offices on Town matters and we requested him to provide a review (non-bidding) to the Council. attached is that summary.

Thanks Barry

Barry A. Tibbetts, M.B.A.
Town Manager
Town of Windham
Of 207.892.1907 ext 1121

From: Ken Clark <kclark158@gmail.com>
Sent: Friday, September 29, 2023 9:00 AM
To: TownCouncil <TownCouncil@windhammaine.us>
Subject: Dave Nadeau - Ethics Complaint

Mark,

David Nadeau had informed me that he was going to vote me off the “voluntary” Long Term Planning Committee, because of comments I made at School Board meetings. He said this directly to me outside the door after one of the three meetings I was “allowed” to attend. Mr. Nadeau’s long-term domestic partner Marge Govoni was on the School Board at the time. It is known publicly that respectfully, Marge and I do not agree on certain school related topics such as allowing my children to have access to porn content in the school Library. (Marge Govoni voted to keep Gender Queer: A Memoir in the high school library for ages 14-17 despite the fact that it has clear graphic sexual images and many adult themes including pornography culture.)

My comments and political views spoken during public input at a school board have nothing to do with my ability to participate on a voluntary town subcommittee. Dave abused his power and broke the code of ethics as a Windham Town Counselor by participating in terminating my application with extreme prejudice in my attempt to volunteer on a town subcommittee because of my political views.

In addition Mr. Nadeau broke the code of ethics on other occasions by:

1. Voting to appoint his long term domestic partner Marge back to a School Board interim seat after she had recently lost the election by the majority of the public. He should have recused himself due to the appearance of conflict of interest.
2. Using his influence as Town Councilor and Town Council e-mail for a political campaign for Marge Govoni.
3. Stating in a Town Council round table that he will vote however Jarrod Maxfield votes.
4. 9/26/23 Using the platform of his council seat to list Marge Govoni’s many contributions to the Town of Windham, effectively campaigning for her from his seat on TV.

As of today, there are still vacancies on the Long Term Planning Committee. It is quite evident that if a volunteer doesn't have the same political beliefs as some current Windham Town Council members, then applicants will not be permitted on your subcommittees.

I ask that this complaint be moved to an Ethics Committee Review.

Respectfully,

Ken Clark

