

TOWN OF OLD SAYBROOK
SELECTMEN'S OFFICE

CARL P. FORTUNA JR., FIRST SELECTMAN

SCOTT M. GIEGERICH, SELECTMAN

MATTHEW PUGLIESE, SELECTMAN

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REGULAR MEETING AGENDA

Tuesday, June 14, 2022

8:30 a.m.

Old Saybrook Town Hall – First Floor Conference Room

Public Zoom Link:

<https://zoom.us/j/97813035481?pwd=QkE1OVFXZlhIRTVTaGhMdjZKMkNOQT09>

Dial In: 929-436-2866

Meeting ID: 978 1303 5481

Passcode: 302302

One Tap Mobile: <tel://9294362866,,97813035481#>

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. COMMENTS FROM THE PUBLIC

IV. COMMENTS FROM THE SELECTMEN: Board of Police Commissioners'
By-Laws

V. APPROVAL OF MINUTES: Board of Selectmen Meeting May 24, 2022

VI. BUSINESS BEFORE THE BOARD

A. Appointments

1. Oversight Committee. Appointment of substitute fiduciary.
2. Blight Hearing Officer. Appointment of a blight hearing officer.
3. Lower CT River Valley Council of Governments. Old Saybrook representative as an alternate member to the RIVERCOG Regional Planning Committee. This appointment is for the unexpired portion of a two-year term due to end 11/2023.

VII. ADJOURNMENT

Memorandum

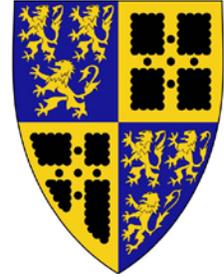
To: Alfred “Chub” Wilcox, Chairman, Police Commission,
Renee Shippee, Vice-Chair, Jill Notar-Francesco, Jessica Calle,
Carol Manning, Joe Maselli, Carl Van Dassel

CC: Michael A. Spera, Chief of Police, Selectmen Scott Giegerich and
Matthew Pugliese

From: Carl P. Fortuna, Jr., First Selectman

Date: June 8, 2022

Re: Commission By-Laws



Attached hereto is correspondence written to me by Attorney James N. Tallberg addressing the by-law changes that passed the Board of Police Commissioners, as well as the one by-law that was tabled, on April 25, 2022.

By way of background, after your April 25th meeting, I contacted CIRMA, the Town of Old Saybrook’s liability carrier, and I expressed my concern that the Police Commission was acting against the advice of town counsel. As the Chief Executive Officer for the town, and solely for purposes of protecting town interests, I further inquired as to whether that might present any particular or potential liability issues for the town. CIRMA thereafter referred me to Attorney Tallberg to discuss. Attorney Tallberg requested that all relevant documents be forwarded to him, which documents are specifically referenced throughout the body of his six-page correspondence to me. In addition, Attorney Tallberg viewed the recording of the Police Commission meeting of April 25th. I was clear to Attorney Tallberg that my concern revolved around potential liability issues for the town, and that if the new by-laws were within the bounds of the law, they should remain in place.

There is not a need on my part to summarize the contents of the letter from Attorney Tallberg. His conclusion on each of the newly voted by-laws is clear and concise: the police commission has overstepped its authority in changing these by-laws, the by-law changes should be rescinded and the by-laws that existed prior to these amendments should be reinstated immediately. He is further of the opinion that the one tabled by-law change should not be considered, and the commission should align itself with the legal opinion of town counsel.

It is my expectation as Chief Executive Officer of the Town of Old Saybrook that the Police Commission will act accordingly at its next regularly scheduled meeting.

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May 27, 2022

PRIVILEGED AND CONFIDENTIAL – VIA ELECTRONIC DELIVERY ONLY

Carl P. Fortuna, Jr.
First Selectman, Town of Old Saybrook
302 Main Street
Old Saybrook, CT 06475
Carl.Fortuna@OldSaybrookCT.gov

Re: Board of Police Commissioners' By-Laws

Dear First Selectman Fortuna:

Per our previous discussions, set forth below please find our legal analysis regarding the recently revised By-Laws of the Old Saybrook Board of Police Commissioners.

I. FACTS:

In February 2022, the Town of Old Saybrook engaged Christopher M. Hodgson, Esq. of Berchem Moses PC to provide a legal opinion as to the authority of the Old Saybrook Board of Police Commissioners (hereinafter the "Police Commission") and Police Chief regarding the operations of the Old Saybrook Police Department ("OSPD"). In his opinion, Attorney Hodgson advised Police Commission Chairman Alfred Wilcox that the Police Commission is a creature of the General Assembly of the State of Connecticut. As such, the Police Commission is only vested with the powers outlined in the Town Charter, which powers are derived from the Connecticut General Statutes. Thus, it was the opinion of Attorney Hodgson that the "general oversight responsibility" of the Police Commission was limited to the express grants of authority set forth in the General Statutes and Town Charter.

Thereafter, Mr. Wilcox submitted proposed changes and additions to the Police Commission By-Laws to Old Saybrook Town Counsel Michael E. Cronin, Jr. (hereinafter "Attorney Cronin"), for a legal opinion. Specifically, Mr. Wilcox submitted proposed changes with respect to the following sections of the Police Commission By-Laws: (1) Complaints Made to Commissioners; (2) Public Comment; (3) Police Commissioners Correspondence; and (4) Responsibilities of Commissioners as to Inquiries. Pursuant to Chapter 7, Section 2 of the Charter for the Town of Old Saybrook, the Town Counsel is appointed by the Board of Selectmen within thirty (30) days after the first meeting following its election. The Town Counsel is "legal advisor to all Town officials, boards, commissions or agencies in all matters affecting the Town and shall upon written request furnish them with a written opinion on any question of law involving their respective powers and duties." See Old Saybrook Town Charter, Chapter 7, Section 2.

On March 10, 2022, at the request of Mr. Wilcox, Attorney Cronin authored a legal opinion regarding the proposed changes to the Police Commission By-Laws. Therein, Attorney Cronin opined that the proposed addition regarding complaints made to commissioners should not be adopted as it violated Connecticut General Statutes § 7-294(bb), OSPD General Order 4.6, and the expectation of the Board, as outlined in Attorney Hodgson's opinion, that it would adopt all policies and avoid deviating from any policies of the Connecticut Police Officers Standards and Training Council (hereinafter "POST"). Attorney Cronin also indicated that the proposed change regarding public comment should not be adopted as it reinforced the improper procedure of complaints being handled by the Commission as opposed to the Police Department; that the proposed police commission correspondence change should not be adopted as it deviates from the procedures set forth in OSPD General Order 4.6; and that the proposed By-Law section regarding responsibilities of commissioners as to inquiries should only be adopted with additional language provided by Attorney Cronin. Attorney Cronin also cautioned all Police Commissioners that discussions regarding Police Commission business should be limited to discussion of posted agenda items at public meetings.

On April 19, 2022, at the request of Mr. Wilcox, Attorney Cronin issued a second letter regarding his legal opinion of March 10, 2022. Therein, Attorney Cronin advised Mr. Wilcox that he reconsidered the legal opinion after reviewing the supplemental material provided by Mr. Wilcox. Upon review, Attorney Cronin determined that the supplemental material provided by Mr. Wilcox did not justify a revision to the original legal opinion. As such, Attorney Cronin's legal opinion and recommendations regarding the proposed By-Law changes remained unchanged. Attorney Cronin specifically cautioned that the Police Commission did not have the legal authority to set up an alternative method for resolving public complaints against law enforcement officers or the Chief of Police outside of the scheme enumerated in General Statutes § 7-294(bb). Attorney Cronin also expressed his opinion that any such scheme would not be a good idea as the Police Commission did not have the appropriate time, training, and/or experience to handle such complaints.

Despite Attorney Cronin's opinion to the contrary, the agenda for the April 25, 2022 meeting of the Police Commission included action items for: (1) Discussion of Town Counsel's Legal Opinion Concerning Proposed Amendments to Police Commission By-Laws; (2) Discussion and Possible Action on the "Complaints Made to Commissioners" By-Law Proposal; (3) Discussion and Possible Action on the "Police Commissioner Correspondence" By-Law Proposal; (4) Discussion and Possible Action on the "Responsibilities of Commissioners as to Inquiries" By-Law Proposal; and (5) Discussion and Possible Action on the "Public Comment" By-Laws Proposal. Although Chairman Wilcox indicated that he is not a licensed Attorney in the State of Connecticut, he consistently expressed his own conclusion that Attorney Cronin's legal opinion was wrong and that he didn't wish to "embarrass" Attorney Cronin in front of the Board. Throughout the meeting, Chairman Wilcox pressured his fellow board members into adopting his proposed By-Law changes. Chairman Wilcox repeatedly claimed that Attorney Cronin's legal opinion is "wrong," claimed that the legal opinion did not provide any statutory or legal reasoning, expressed his view that the legal opinion was "very conservative," and implored his fellow Commissioners to be guided by his interpretation of inapplicable Connecticut Supreme Court caselaw, as opposed to Attorney Cronin's opinion.

Despite protests from certain Commissioners that Attorney Cronin had advised the Commission against adopting the proposed By-Laws, Chairman Wilcox put each of his proposed By-Law changes to a vote based on his representations that the Commissioners had the authority to make the proposed changes. In the end, the proposed change regarding "Complaints Made to Commissioners" was tabled, and the other three proposed changes regarding "Police Commissioner Correspondence," "Responsibilities of Commissioners as to Inquiries," and "Public Comment" passed.

On May 5, 2022, Chairman Wilcox provided a letter to First Selectman Fortuna in which he again expressed his legal conclusion that the Board of Police Commissioners was within its right to make the By-Law changes and that it should be allowed to make a change regarding “Complaints Made to Commissioners” as well. Chairman Wilcox shared his belief that his action and the proposed By-Law changes are based on “clear and unassailable logic” and “unchallenged legal authorities.”

II. ANALYSIS

A. **The Board Of Police Commissioners Should Follow The Town Counsel’s Legal Opinion**

“It is well established that a [town’s] charter is the fountainhead of municipal powers. . . . The charter serves as an enabling act, both creating power and prescribing the form in which it must be exercised.” Windham Taxpayers Assn. v. Bd. of Selectmen, 234 Conn. 513, 528-29 (1995). “[I]n an area of local concern, . . . general statutory provisions must yield to municipal charter provisions governing the same subject matter.” Cook-Littman v. Board of Selectmen of Town of Fairfield, 328 Conn. 758, 770 (2018); quoting Bd. of Educ. v. Naugatuck, 268 Conn. 295, 308-09 (2004).

Pursuant to Town Charter Chapter 7, Section 2, the Town Counsel (Attorney Cronin) is legal advisor to all Town boards and commissions, including the Police Commission. Additionally, the Town Counsel shall, upon written request, furnish to any board of commission a written opinion on any question of law involving their respective powers and duties. In response to Chairman Wilcox’s request, Attorney Cronin provided such an opinion on March 10, 2022.

Attorney Cronin’s legal opinion was well-reasoned and relied on specific statutory authority for his position that the Police Commission should not adopt the proposed By-Law changes. Specifically, Attorney Cronin cited to Town Charter Chapter 5, Section 15, which grants the Police Commission “the duties and powers granted to boards of police commissioners by the General Statutes of Connecticut.” As stated in Attorney Hodgson’s opinion, the Police Commission has a general oversight responsibility for the operations of the Police Department pursuant to Connecticut General Statutes § 7-276. However, that grant of authority to Police Commissions is abrogated by other General Statutes and POST Policies, which prescribe the manner in which municipal Police Departments must function. Specifically, it is the Police Department, and not the Board of Police Commissioners, which serves criminal process. See Connecticut General Statutes § 7-281. Likewise, only a person certified through POST can perform law enforcement functions, including, but not limited to, the prevention, detection, and/or investigation of a crime. See Connecticut General Statutes § 7-294d(b).

As set forth in more detail below, Attorney Cronin’s legal opinion carefully analyzed the interplay between the grant of authority to the Police Commission pursuant to Connecticut General Statutes § 7-276 against the statutory authority for the investigation of public complaints concerning alleged misconduct of law enforcement personnel pursuant to Connecticut General Statutes § 7-294bb. Therein, Attorney Cronin properly concluded that it is the Chief of Police through an Internal Affairs Unit or an independent third-party of the Chief’s choice, and not the Police Commission, that has the statutory authority and obligation to investigate **all** public complaints alleging misconduct by law enforcement personnel. The Police Commission never had and does not have any authority to investigate such complaints as it would conflict with the statutory scheme set forth in General Statutes § 7-294bb. Therefore, Attorney Cronin properly cautioned against the proposed By-Law change regarding “Complaints Made to Commissioners,” which should be withdrawn as a proposed change. Thereafter, the Police Commission should continue to comply with the legal opinion of Attorney Cronin and follow the procedure set forth in OSPD General Order 4.6 and their current By-Laws for the processing of any complaint that is received regarding law enforcement personnel as OSPD General Order 4.6 complies with the statutory provisions of Connecticut General Statutes § 7-294bb. The proposed By-Law change does not.

With respect to the remaining three changes that were passed on April 25, 2022, those By-Laws should be rescinded by vote of the Commission. Each of the Commissioners should have been given the opportunity to fully review Attorney Cronin's legal opinion and supplemental letter. The opinion of Attorney Cronin, not that of the Chairman, should carry the day on issues pertaining to the proposed By-Law changes. Originally, the Chairman followed the procedures set forth in the Town Charter by soliciting a legal opinion from Attorney Cronin. However, upon receipt of the opinion with which he did not agree, Chairman Wilcox deviated from the Town Charter, which governs the Police Commission. Specifically, Chairman Wilcox presented his own legal analysis as the correct opinion in soliciting votes from fellow Commissioners on his proposed By-Law changes. Chairman Wilcox also represented to fellow Commissioners that Attorney Cronin had changed his legal opinion, when all written product from Attorney Cronin states otherwise.

In obtaining the votes necessary on his proposed By-Law changes, Chairman Wilcox presented his own opinion that was in direct contradiction to the official legal opinion of the Town. As Chairman Wilcox's conduct strayed far afield from his statutory authority and directly contravened the official legal opinion of the Town Counsel, we believe that the Police Commission erred in rejecting the recommendations of Attorney Cronin's March 10, 2022 legal opinion.

B. The Proposed By-Law Changes Are Improper

As set forth in more detail below and as originally analyzed in Attorney Cronin's formal legal opinion of March 10, 2022, each of the four proposed Police Commission By-Law changes presented by Mr. Wilcox are inappropriate. As Attorney Cronin is the legal advisor of the Town and the Police Commission, the Police Commission should take prompt action to align its conduct with the Town's formal legal opinion on the proposed By-Law changes.

1. Proposed By-Law Change For "Complaints Made to Commissioners"

First, Mr. Wilcox proposed adding a By-Law with respect to "Complaints Made to Commissioners." The proposed By-Law would create a procedure by which the Police Commission could investigate citizen complaints regarding the misconduct of law enforcement personnel. Attorney Cronin correctly opined that the Police Commission should follow the existing procedure of referring all complaints regarding the conduct of law enforcement officers to the Police Department for processing pursuant to General Order 4.6.

Specifically, the proposed change regarding Complaints would directly conflict with the provisions of General Order 4.6 and the provisions of Connecticut General Statutes § 7-294(bb). Pursuant to Public Act 14-166, the Connecticut General Assembly directed POST to develop and implement a written policy concerning the acceptance, processing and investigation of all complaints from members of the public relating to alleged misconduct committed by law enforcement personnel. Thereafter, POST implemented a Mandatory Uniform Policy, which was adopted by the OSPD. Pursuant to the provisions of Connecticut General Statutes § 7-294bb, the POST Uniform Policy is the appropriate statutory means by which complaints from citizens regarding law enforcement personnel can be received and processed by municipalities.

To comply with the Uniform Policy, the OSPD adopted General Order 4.6, and directed the Police Commission, through its By-Laws, to forward any correspondence related to personnel matters to the Chief of Police for processing pursuant to General Order 4.6. The proposed change to "Complaints Made to Commissioners" would circumvent this process by allowing the Police Commission to conduct its own investigation without referring the complaint to the Chief of Police. Not only does the Police Commission lack the statutory authority to conduct such investigations (in either the Town Charter or General Statutes), but any such investigation would violate the provisions of Connecticut General Statutes § 7-294bb, the POST Model Policy, and OSPD General Order 4.6.

The POST Uniform Policy indicates that the Chief of Police (not the Police Commission) has primary oversight and authority over the investigation of complaints made against law enforcement personnel. Upon receipt of any such complaint, it is the responsibility of the Chief of Police to assign the complaint to the appropriate division, unit, person or designated supervisor for investigation. For tracking and reporting purposes, the Uniform Policy also requires that each complaint receive an individual complaint number from the Police Department. Thus, it is the Police Department, through the Chief of Police, that has the statutory responsibility to accept, process, and investigate **all** complaints of law enforcement misconduct. Since the investigation is related to typical police functions and may expose criminal activity, it is properly the domain of the Police Department and not the Police Commission. Accordingly, the proposed change regarding “Complaints to Police Commissioners” that was presented by Mr. Wilcox is improper and would, if adopted, be inconsistent with the provisions of the Connecticut General Statutes.

In our opinion, Attorney Cronin properly analyzed the issues relevant to the investigation of complaints against law enforcement personnel. As such, the proposed By-Law change regarding “Complaints to Police Commissioners” should, in the first instance, be withdrawn to avoid running afoul of the Connecticut General Statutes. At the very least, we believe that the Board of Police Commissioners should act to align their conduct with the legal opinion of Attorney Cronin.

2. Two Of The Adopted By-Law Changes Should Be Reversed

As with the proposed change for “Complaints to Police Commissioners,” Attorney Cronin properly analyzed and recommended against adopting proposed changes related to “Public Comment,” “Police Commissioners Correspondence,” and “Responsibilities of Commissioners as to Inquiries.” In defiance of Attorney Cronin’s formal legal opinion, those three proposed By-Law changes were adopted by the Board of Police Commissioners on April 25, 2022. As set forth below, the Board should take prompt action to reverse its decision and comply with the formal legal opinion of the Town Counsel.

With respect to the proposed change to the “Public Comment” By-Law, Attorney Cronin correctly identified that the proposed change would allow citizens to make complaints directly to the Police Commission regarding the conduct of individual officers. The current By-Laws discourage public commenters from identifying specific officers by name and request that any personnel concerns be brought directly to the Chief of Police or be submitted to the Commission Chairperson in writing for proper dissemination pursuant to OSPD General Order 4.6. The proposed change, when read in conjunction with the proposed change to “Complaints to Police Commissioners” reinforces the flawed belief of Mr. Wilcox that the Police Commission has the authority to accept, process, and conduct its own investigation regarding the conduct of individual law enforcement officers. As set forth above, the Board of Police Commissioners has no such right, which was unambiguously granted to the Police Department, through its Chief of Police, pursuant to Connecticut General Statutes § 7-294(bb) and the POST Uniform Policy regarding complaints alleging misconduct by law enforcement personnel.

As to the proposed By-Law change to the “Police Commission Correspondence” section, Attorney Cronin is correct that the proposed By-Law does not reference OSPD General Order 4.6 or the Police Department itself. As with the above proposals, we believe Mr. Wilcox is incorrect regarding this By-Law change as it is not authorized by statute. Specifically, it is the Police Department, not the Police Commission, which must process and investigate **all** complaints regarding the conduct of law enforcement personnel. The proposed By-Law change muddies the waters and no longer requires that complaints related to personnel matters be forwarded to the Chief in accordance with OSPD General Order 4.6. This proposed By-Law change, which was adopted April 25, 2022, could create problems if a complaint regarding a law enforcement officer is not properly forwarded to the Chief of Police for investigation in accordance with OSPD General Order 4.6 and the POST Uniform Policy adopted pursuant to Connecticut General Statutes § 7-294(bb).

As the Police Commission has no right to accept and process complaints regarding law enforcement personnel or conduct investigations regarding law enforcement personnel, the Board should take prompt action to reverse their decision of April 25, 2022 regarding the proposed changes to the “Public Comment” and “Police Commissioner Correspondence” By-Laws and should vote to adopt and continue following the By-Laws in effect on March 10, 2022 as recommended in Attorney Cronin’s opinion. The Commissioners should also be cautioned that any complaint they receive regarding the conduct of individual law enforcement officers should be immediately referred to the Chief of Police, and that the Police Commission and its individual Commissioners should not take any further action regarding any such complaint pending the conclusion of the OSPD investigation.

As to the last proposed By-Law change regarding “Responsibilities of Commissioners as to Inquiries” Town Counsel Cronin opined that the change could be implemented if a sentence indicating that “[t]he individual members of the Commission are advised that they have no independent authority to speak for or take action on behalf of the Commission unless they are specifically authorized to do so by a majority vote of the Commission.” This language was included in the proposed By-Law change that was presented to and voted on by the Police Commission on April 25, 2022. In so doing, it removes a current provision of the By-Laws stating that “[w]hen concerns are brought to a Commissioner’s attention regarding Department employees, the Commission should direct such concerns to the Chief of Police.” While this is somewhat concerning, the requirement to forward all complaints regarding personnel matters will be clearly delineated in other portions of the By-Laws and remain in effect pursuant to OSPD General Order 4.6 and the POST Model Policy regarding complaints related to law enforcement personnel should the Police Commission take action, as recommended above, to comport with Attorney Cronin’s legal opinion.

III. CONCLUSION

In sum, we believe that the legal opinion issued by Attorney Cronin on March 10, 2022 and verified by Attorney Cronin in his letter of April 19, 2022, was well-reasoned and relied on specific statutory authority in recommending against adoption of the proposed Police Commission By-Law changes offered by Mr. Wilcox. As such, we believe that the Police Commission erred in taking action that rejected the formal legal opinion issued by Attorney Cronin.

Very truly yours,



James N. Tallberg
jtallberg@kt-lawfirm.com

JNT/ajg