



TOWN OF OLD SAYBROOK

Police Commission

302 Main Street, Old Saybrook, Connecticut 06475

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A message to the Old Saybrook Community, from Alfred Wilcox, Chair of the Old Saybrook Police Commission:

Attorney Tallberg has delivered a letter dated May 27, 2022 to First Selectman Carl Fortuna, basically saying that Mr. Cronin was right that the Police Commission's April by-law amendments were illegal (at least, three out of four of them), and that I was way overstepping my bounds in advancing and defending those by-law changes despite Mr. Cronin's opinion. So that interested people can judge for themselves, I think it is important that I explain how my analysis differs from that of Mr. Cronin and Mr. Tallberg. I imagine that most people interested in this question have already seen the opinion letters by Mr. Cronin and Mr. Tallberg, but if they have not, they may email me at "Alfred.Wilcox@Oldsaybrookct.gov" and I will forward them.

Mr. Tallberg begins by talking about the Town charter and Attorney Chris Hodgson's earlier opinion regarding the role of the Police Commission respecting "operational" matters. Mr. Tallberg emphasizes that the Commission's role is

circumscribed by both statute and charter, and of course that is true, but what is the significance of that to the questions here?

The Town Charter grants to our Police Commission every power authorized under the Connecticut statute (section 7-276) which enabled municipalities to create police commissions. That statute, adopted years ago, empowers police commissions with the sole authority to hire, promote and fire police officers, and to adopt “all needful regulations” in support of that power. The Supreme Court of Connecticut has held that our police commissions have “wide discretion” in determining if conduct by members of their police department was “injurious to the efficiency” of those police departments.

How might it come to the attention of the Police Commission that something “injurious to the efficiency” of our police department had occurred or was occurring? It seemed to me reasonable to assume that a complaint about one of our police officers, or about some other aspect of our department, might come up via the Chief of Police, or via a disgruntled police officer, or via an unhappy citizen, or on a Commissioner’s own observation, and therefore it seemed appropriate to provide in our by-laws a vehicle (a “regulation”) for that complaint or concern to reach us. That is precisely what the “citizen complaint” by-law was intended to accomplish.

Mr. Tallberg opines, however, that “The Police Commission never had and does not have the authority to investigate such complaints....” I have to believe this

would come as a surprise to the Connecticut Supreme Court, because in a 1994 decision by that Court, it “commended” the Madison Police Commission for conducting both a preliminary investigation and then a formal hearing before voting to terminate the employment of their chief of police.

To be fair to Mr. Tallberg, in the sentence I partially quoted above, he went on to add “... as it would conflict with the statutory scheme set forth in General Statutes section 7-294bb.” So perhaps he only meant that while police commissions could receive and investigate complaints from citizens and actually decide on them before “bb” was adopted in 2015, they haven’t been able to do it since then. Let us assume that is what he meant.

This is the crux of the issue being debated: in adopting “bb” did the legislature intend to limit the authority of police commissions to receive and act on complaints made to them?

What exactly is “bb”? It is a 2015 amendment to the Connecticut statute creating the Police Officers Standards and Training Council (“POST”), and it authorized the POST Council to develop minimum recommended procedures for police departments to receive and process complaints against members of those departments.

Neither Mr. Cronin nor Mr. Tallberg quoted any language in “bb” directing that thereafter police commissions were to be powerless to act, nor do they point to anything in the “bb” statute saying that cases like the 1994 Madison police chief

case are to be overturned, or that the earlier statute authorizing and empowering police commissions is to be repealed in whole or in part. This is what I meant when I said that their opinions were “opaque.” They rely on unexplained inference, rather than express statutory language.

Once again, however, the Connecticut Supreme Court provides guidance.

In a 2006 opinion the Court reiterated its “well established practice of statutory interpretation, under which we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of the case, including the question of whether the language actually does apply. In seeking to determine that meaning, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter.” Another decision, in 2001, further explained: “We presume that laws are enacted in view of existing relevant statutes...because the legislature is presumed to have created a consistent body of law.”

As we have seen above, police commissions are creatures with specified statutory authority. So too is the Police Officer Standards and Training Council created by section 7-294 CGS. It is the 2015 amendment to that statute, adding subsection “bb,” that both Mr. Cronin and Mr. Tallberg rely on as impliedly repealing that part of the earlier statute authorizing police commissions to also receive and act

upon citizen complaints. But was such a repealer the intent of the legislature in 2015?

To answer this, we need to examine “bb” and its history more carefully.

The statute creating POST is very clear: the Police Officer Standards and Training Council is empowered to provide standards governing police officers, their training, and the operations of police departments. This is spelled out in section 7-294d entitled “Powers of council.” That section delimits the 23 specific areas in which POST may operate. Not one of those 23 specific subsections gives POST any authority over police commissions (in towns which have them) or boards of selectmen (in towns which don’t).

Mirroring this, “bb” itself has not one word about police commissions or boards of selectmen. It is exclusively about “the law enforcement agency.” To eliminate any ambiguity, subsection bb(d) provides that “For purposes of this section, ‘law enforcement agency’ means the...State Police...or any municipal police department.”

So, if nothing in the text of “bb” reveals an intent to repeal or limit the statutory authorities of police commissions, and nothing in the text of the POST statute gives POST any power whatsoever to regulate police commissions, what about the legislative history?

The legislative history of “bb” is studiously ignored by both Mr. Cronin and Mr. Tallberg, and for good reason. It completely contradicts their conclusion.

The legislative history of “bb” in both the House and the Senate is clear that “bb” had one purpose, and one purpose only. That was to address and correct a problem which had been revealed in a study conducted by the Connecticut branch of the American Civil Liberties Union. That ACLU study showed that many municipal police departments in Connecticut, even though they ostensibly had procedures and regulations in place to permit citizens to submit complaints to them, had created artificial barriers to discourage citizens from filing complaints with them. Therefore “bb” identified a laundry list of issues that POST should address and law enforcement units should then rectify and adhere to. Again, though, not one of those laundry list of issues involved police commissions or boards of selectmen.

Nor should any of this be surprising. There was no evidence before the legislature that police commissions were in any way problematic. There was no evidence that the existence of alternative means for citizens to express complaints — either to the police commission, the board of selectmen, the police department, or all of them — was confusing or harmful to either citizens or police department personnel. The only evidence was that the police could not be trusted to police themselves, when a citizen complained to them.

Given this undisputed legislative history as to the nature of the problem being addressed, are we to believe that the legislature's answer was to insulate police departments from scrutiny by their police commissions? That would be the very antithesis of a sensible solution.

To go back to the Connecticut Supreme Court's instructions on how to interpret statutes, if the words of the POST statute make it clear that POST does not apply to police commissions, if the legislative history makes clear that the problem being addressed in 2015 had nothing to do with police commissions, and if the interpretation being advanced would make the POST statute inconsistent with the statute authorizing and empowering police commissions, that interpretation must be rejected.

It is in fact quite easy to reconcile the language of the POST amendments in "bb" with the traditional powers of police commissions. Police commissions are to oversee police departments and ensure that they operate within the bounds of federal, state and local constitutions, charters, and laws. One of those laws is "bb," so one of the police commission's obligations is to ensure that the police department is abiding by POST's instructions. If a citizen complains to the Commission that our Department is not obeying POST, is the Commission powerless to consider that complaint? That would appear to be the answer compelled by Mr. Cronin and Mr. Tallberg's analysis, but that answer continues to make no sense to me.

Similarly, if a citizen were to bring to the Commission a complaint that the leadership of the department was taking huge bribes from a drug cartel (I use an implausible hypothetical on purpose, to avoid any suggestion that I am accusing our current leadership of wrongdoing), should the Commission be bound to refer that complaint to the same leadership of the department, as Mr. Cronin and Mr. Tallberg command? Shouldn't the Commission have the discretion to refer that complaint to the federal Drug Enforcement Administration, as my proposed by-law would permit?

Fortunately, there appear to be few complaints against members of our police department. Undoubtedly, most complaints that might come to the Commission would likely be determined by the Commission to be best processed by the Department. But for the hopefully very rare case in which it seemed evident to the Commission that a complaint presented concerns that someone other than our own police officers should investigate, I remain of the view that the Commission should have and exercise discretion. That is what the Connecticut statute creating police commissions authorizes, and neither Mr. Cronin nor Mr. Tallberg has quoted any statutory language or Supreme Court opinion taking that power away.