

**Final Report in the Matter of the Complaint dated October 8, 2009**

This constitutes the official report of the Town of Ridgefield Board of Ethics ("the Board") in response to the complaint submitted by Susan Cocco, dated October 8, 2009 (notarized on October 10, 2009) ("the complaint").

**Procedural Background**

The complaint, which attaches several allegedly supporting e-mails, was delivered to the Board's chair on October 12, 2009. On October 14, 2009, at its regularly scheduled quarterly meeting, the Board officially received the complaint in accordance with the Town Charter and the Board's Rule and Regulations. The Board determined that the complaint satisfied the procedural requirements for complaints set forth in the Town Charter. The Board then reviewed the complaint on the merits. Upon its review, the Board (Baumann, D'Addario, Harrington, Horner, Van de Weghe) voted unanimously to dismiss all of the allegations in the complaint that the Board determined did not state a valid claim, which were all of the claims except for that relating to the alleged disclosure of confidential information in violation of Section 11-6 of the Town Charter. As to that allegation, the Board voted to conduct an investigation. Following the conclusion of its meeting, the Board notified Messrs. Palermo, Heiser and Cascella (collectively "the respondents") of the complaint and its actions.

On October 22, 2009, the Board held a closed special meeting regarding the complaint. The Board heard from Messrs. Palermo, Heiser and Cascella, and from Thomas Mooney, the attorney for the Ridgefield Board of Education ("BOE") representing Mr. Palermo. In addition, Mr. Palermo presented several witnesses, including Richard Steinhart, the chair of the negotiating committee for the BOE, Robert Fitzpatrick, a health care consultant working with the BOE, and Deborah Low, the superintendent of the Ridgefield Public Schools. The Board also heard from David Ulmer. Following the investigatory portion of the special meeting, the Board (Baumann, D'Addario, Harrington, Horner, Van de Weghe) voted unanimously to dismiss the complaint in its entirety on the basis that there was no probable cause to support a finding that the Town Charter had been violated as alleged in the complaint.

**The Allegations in the Complaint**

The complaint, in essence, alleges that Mr. Palermo, a member of the BOE, violated confidentiality obligations set forth in Section 11-6 of the Town Charter by e-mailing an allegedly confidential presentation relating to health savings accounts prepared for the BOE in its negotiations with the teachers' union ("the HSA presentation") to Mr. Heiser in his capacity as the chairman of the Ridgefield Board of Finance ("BOF"). The complaint further alleges that Mr. Heiser thereafter "widely and illegally distributed" the HSA presentation by e-mailing it to the other members of the BOF, and to Jill Bornstein, a Republican candidate for the BOF. The complaint further alleges that Mr. Cascella, who is also a member of the BOF, violated Section 11-6 but does not explain how he did so.

The complaint also contains a myriad of additional allegations against the respondents, including that they violated the standards of service, treatment of the public and conflict of interest provisions set forth in Sections 11-2, 11-4 and 11-5 of the Town Charter, respectively. As to those Charter provisions, the complaint generally alleges that (1) Mr. Heiser improperly disclosed the HSA presentation to Ms. Bornstein for partisan political reasons (Section 11-5), and (2) the respondents acted improperly in their efforts to have Ms. Bornstein and Heidi Namiot (a Democrat potential write-in candidate for the BOF to whom the HSA presentation was disclosed by David Ulmer, a Democrat member of the BOF) destroy the HSA presentation after receiving it via e-mail (Sections 11-2 and 11-4).

### Discussion

As a threshold matter, there is ample reason to conclude that Ms. Cocco's complaint is a transparent attempt to use this Board for partisan political purposes shortly before a contested election. This fact is plainly evidenced by several simple observations. First, Ms. Cocco is the chair of the Ridgefield Democrat Town Committee ("DTC") and all of the respondents are Republicans. While recognizing that the chair of any political organization has just as much right to file an ethics complaint as any other Town resident, under the circumstances presented here the Board does not find this to be mere coincidence. Indeed, no Democrats on the BOF or BOE - the potentially interested Town boards in this matter who presumably would be in a better position to judge the confidentiality issue than Ms. Cocco - complained about the disclosure of the HSA presentation, nor did any other individuals involved in the matters discussed in the complaint. Indeed, Mr. Ulmer confirmed to the Board that the HSA presentation was not confidential and that the allegations here regarding improper disclosure were meritless. Second, Ms. Cocco publicized her intent to submit a complaint to the Board in the local newspapers prior to actually submitting the complaint, as evidenced by the article in the Ridgefield Press on October 8, 2009. This generated the expected - and perhaps intended - partisan political reactions on both sides of the issue, which has now lasted for several weeks. As even a cursory review of the relevant Town Charter provisions reveals, ethics complaints generally are to be submitted to the Board on a confidential basis, and disclosure generally does not occur until the end of the Board's inquiry. One obvious reason for this is to prevent public officials from being publicly maligned based on mere allegations of ethics violations, as occurred here. The fact that Ms. Cocco chose to publicize this matter in the newspapers, even before submitting it to the Board, speaks volumes as to the true motivation for the complaint. Third, the complaint accuses Mr. Heiser of improperly disclosing the HSA presentation to Ms. Bornstein because she is a candidate for, and not a member of, the Board of Finance. Yet as Ms. Cocco well knew at the time she submitted the complaint, Mr. Ulmer, who is a Democrat, did precisely the same thing when he sent the HSA presentation to Ms. Namiot, who is a potential Democrat write-in candidate for the BOF. However, Ms. Cocco did not complain about the disclosure by Mr. Ulmer. Finally, one of the e-mails submitted by Ms. Cocco (from Mr. Ulmer to Ms. Namiot dated September 30, 2009), discusses using this incident for partisan political purposes in the upcoming election. Mr. Ulmer told the Board that he believed the issues raised by the disclosure could legitimately be used for partisan political campaign purposes, although he denied that he was aware of any effort to use this Board for such purposes. While the appropriateness of politicizing such matters may be a debatable point in the forum of public opinion, it is unseemly to use this Board as a tool to

promote such electioneering in a public forum prior to the timely conclusion of an investigation into the matters alleged. The Board's determination that the HSA presentation clearly was not confidential information within the meaning of Section 11-6 (as explained below), which is the crux of Ms. Cocco's complaint, is proof enough of this proposition.

While the Board is cognizant of the political nature of this matter, it nonetheless thoroughly reviewed the merits of the complaint and issues its decision herein on that basis. With respect to the allegations relating to the purported violations of Section 11-6, the Board finds that the HSA presentation was not confidential information within the meaning of the Town Charter. Section 11-6 defines "confidential information" as "any information not in the public record and which is obtained only by reason of an official's or employee's position." The information presented by the respondents and witnesses at the Board's October 22 meeting unequivocally establishes that the contents of the HSA presentation, which is accurately described as an educational piece on the efficacy of health savings accounts, were a matter of public record. Indeed, the HSA presentation, which was prepared by Mr. Fitzpatrick, previously was delivered in substantially similar form to many teachers and school administrators in the spring of this year in a context that clearly was not confidential. It is also apparent that some of the information in the presentation is available on various websites. Moreover, the presentation does not contain any information relating to strategy or the negotiation sessions between the BOE and the union, which typically would be the kind of information deemed confidential. Mr. Palermo also did not violate any confidentiality agreement applicable to the members of the BOE negotiating team. In that regard, the Revised Ground Rules for Negotiations applicable to the proceedings between the BOE and the union at issue here provide for the confidentiality of such information, which, as noted, is not reflected in the HSA presentation. Mr. Ulmer also confirmed that there was nothing confidential in the HSA presentation, and that if he thought there had been he would not have forwarded it to Ms. Namiot. Accordingly, neither Mr. Palermo, Mr. Heiser nor Mr. Cascella violated Section 11-6 of the Town Charter.

Moreover, even if the HSA presentation, or any part of it, was properly considered "confidential information" as defined by the Town Charter, the Board does not find the disclosure by Mr. Palermo to Mr. Heiser, and Mr. Heiser to the other members of the BOF, to be a violation. The BOE and BOF were simply communicating with each other regarding the status of the negotiations, a matter obviously within the budget purview of both boards, and there is nothing in the Town Charter suggesting that such inter-board communications are improper. To the contrary, Section 11-6 clearly states that town officials and employees shall not, without prior authorization, disclose confidential information "to others that do not bear upon the official's or employee's discharge of official duties." (emphasis added). This provision implies that disclosure in the course of discharging official duties is proper. The respondents and Mr. Ulmer, who was the BOF's liaison with the BOE relating to these negotiations, all confirmed that the BOF expected to be informed as to these matters. Mr. Palermo forwarded the HSA presentation to Mr. Heiser in this instance because Mr. Ulmer was in Colorado on vacation. The Board thus finds that Mr. Palermo properly disclosed the HSA presentation to Mr. Heiser in the discharge of his official duties, and that Mr. Heiser did the same with respect to the other members of the BOF.

As for Mr. Heiser's "disclosure" of the HSA presentation to Ms. Bornstein, the HSA presentation was not confidential, and therefore Mr. Heiser did not violate the Town Charter by sending it to her. However, it is clear from the various statements presented to the Board that the collective wisdom of all involved agree that it would have been prudent to circulate the HSA presentation only to current BOF members, and not to candidates such as Ms. Bornstein and Ms. Namiot. Thus, it was simply a matter of courtesy for Mr. Heiser, as he stated to the Board, to apologize to his fellow BOF members and Mr. Palermo for sending the presentation to Ms. Bornstein. Moreover, having determined that the presentation should be shared only with current BOF members, it was also appropriate for the respondents to request that both Ms. Bornstein and Ms. Namiot destroy the presentation rather than further disseminate it. Regardless of motivation, however, none of those actions constitutes any violation of the Town Charter.

The remaining allegations in the complaint are frivolous. There was no "conflict of interest" within the meaning of Section 11-5 of the Town Charter when Mr. Heiser sent the HSA presentation to Ms. Bornstein. Indeed, it is not apparent to the Board how the HSA presentation could be used for anyone's "political gain", as Ms. Cocco alleges. In any event, the point is moot because the presentation was not confidential. Moreover, as noted above, the respondents did not violate the Town Charter when they requested that Ms. Bornstein and Ms. Namiot destroy the HSA presentation after receiving it via e-mail. Even assuming that the presentation was "confidential" as alleged in the complaint (which it was not), it was incumbent upon the respondents to request that any unauthorized recipient return or destroy the presentation in order to avoid further unauthorized disclosures. Finally, the allegation that Mr. Palermo violated the Town Charter in any way by using his work e-mail address to conduct official town business, regardless of whether the HSA presentation was confidential information, is simply absurd. Nothing in the Town Charter prohibits a volunteer public official, such as Mr. Palermo (or anyone else for that matter), from using their work or personal e-mail account to conduct town business. Indeed, it is difficult to imagine how any Town board volunteer who works full or part-time could effectively attend to town business on a timely basis if strict segregation of e-mail communications related to town business was required.

### **Conclusion**

For all of the reasons set forth above, the Board hereby dismisses the complaint in its entirety upon its finding of no probable cause.

Town of Ridgefield Board of Ethics  
(Van de Weghe, Chairman, Baumann, D'Addario, Harrington, Horner, members)

Dated: October 23, 2009