

City of Bainbridge Island
Ethics Board
Advisory Opinion

Case # 2018-02

Date Filed: 4 September 2018

Complainant: Frank Gremse

Respondent: City Council

Advisory Opinion issued per COBI Code of Ethics Article III, Section F

The purposes of Article I, the Core Values section of the City of Bainbridge Island Ethics Program, are set out in the preamble:

“The City of Bainbridge Island has adopted the following Core Values and Ethics Principles to promote and maintain the highest standards of personal and professional conduct among all the people who comprise the City’s government. The optimal operation of democratic government requires that all of its decision-makers be fair and accountable to the people they serve.”

In addition to the COBI stated reasons, it is clear from materials related to municipal government, such as the America Society of Public Administrators (ASPA) Code of Ethicsⁱ, that there are further purposes, among them:

1. To advance the public interest
2. To promote democratic participation
3. To strengthen social equity
4. To demonstrate personal integrity

The efficacy of government and its ability to deliver on the needs of the community is founded in the trust that a community has in that body. Trust is hard to earn and very easy to lose. It can be difficult to define tightly what behavior reflects the Core Values, and we do not propose a static definition of this behavior, yet instead we look towards what promotes trust and what erodes it. In an article by Williamsⁱⁱ, the matter of civility in political discourse is examined. “[H]ow do we define civility? Especially if we accept the notion that it cannot be

static – as technology and innovation are constantly redefining the means and manner in which we communicate. In this sense civility is a lot like obscenity, at least in the way the late Supreme Court Justice Potter Stewart chose to define it in his famous opinion in *Jacobellis v. Ohio* (1964), ‘I know it when I see it.’”

We can look towards rules of etiquette established by governing bodies to provide greater definition. The U.S. House of Representatives Republicans’ rules of decorum include several categories of unacceptable speechⁱⁱⁱ:

- Defaming or degrading the [House] – in our case, the City
- Criticism of personal conduct
- Impugning the motives of another member
- Charging falsehood or deception
- Claiming lack of intelligence or knowledge

While not as precisely articulated, the City of Bainbridge Island Ethics Board believes our Code of Ethics Core Values were promulgated to engender trust by the public in our city government. The First Amendment protects speech, including that of elected officials, however “it does not remove the individuals’ responsibility to be respectful in their use of language. With a far greater means of amplifying their message, elected officials have an even greater responsibility to be judicious in their communication respecting the rules of . . . civil discourse for the benefit” of the council and the community.^{iv} In other words, elected officials are held to a higher standard when acting in their official capacity than their constituents who do not purport to represent the community. This is with the intent to engender trust in government and the representatives who are elected.

The Ethics Board recognizes that people are human, and mistakes and misjudgments will be made. Where the Ethics Board has a responsibility, it is to recognize the problematic actions, particularly when they seem to become a pattern of behavior that causes citizen concern and thus weaken the public trust. The role of the Ethics Board is to educate when we observe inappropriate behavior, or it is called to our attention, and to recommend behavior that comports with our shared values and principles, while understanding there is not

a static definition of acceptable behavior. In issuing this advisory opinion, we are guided by other democratic bodies which deal with similar issues of behavior.

In developing an Advisory Opinion in this Article I complaint, the initial complaint was reviewed. This Advisory Opinion is based on that considered review.

Mr. Gremse's complaint stems from a basic lack of information regarding his status in his position as Chair of the Environmental Technical Advisory Committee (ETAC). This is one of several citizen committees whose members are appointed by City Council to serve a term on the committee. The committee elects their own chair or leader. Such committees generally have a council member who serves as a liaison to the committee, reporting back to City Council on matters being dealt with by the committee. The liaison in this instance is Rasham Nassar.

In the case before the Ethics Board, there was apparently a decision by City Council to expand the membership of the ETAC from five to nine members. As chair of the ETAC, Mr. Gremse offered a memorandum detailing his concerns with expanding the committee and particularly with the addition of one particular proposed member. The committee members had ranked the six prospective committee applicants according to "fit" and needs within the ETAC committee. The memo written by Mr. Gremse detailed the information of concern, including commentary about one applicant in particular, information which was supported by background information.

The ethics problems in this case stem from the lack of information provided to Mr. Gremse by the City Council liaison about concerns with his own behavior, including apparently his comments about one of the applicants. Even upon contact with the council member, no statement was made detailing what behavior of Mr. Gremse was of concern, nor was he given warning that continued such behavior could lead to his removal as chair of ETAC or other sanction. At a City Council meeting, the liaison made a motion to have the City Council remove Mr. Gremse from his position as chair of ETAC. As Mr. Gremse states in his complaint:

"I have no details of what she and the CC are displeased with. No one has talked to me about what behaviors and actions which I took were displeasing. No one has talked to me about the consequences of not changing my behavior and the time frame in which I should make those

changes. No one has asked me for an explanation of my behaviors and actions.” In particular, Mr. Gremse stated that he would have expected a face-to-face meeting to discuss the issues and problematic behavior; that he would have been asked for an explanation of his behavior; that the consequences of his behavior would have been pointed out to him; and that there would have been some documentation in writing regarding the matter at hand.

Further in his complaint, Mr. Gremse indicates that some statements regarding his performance on the ETAC and communication between himself and council member Nassar were not accurate and were misrepresented to other council members. These conversations were characterized by the council liaison as dealing with Mr. Gremse’s performance behavior; Mr. Gremse indicates this was not the case, and that he was given no warning about his behavior nor possible sanctions of it. At no time was Mr. Gremse told that he was risking the role of chair of ETAC by his behavior. The City Council on August 14 voted on and approved the motion of Rasham Nassar to remove Mr. Gremse from the chairmanship of ETAC.

Recommendation: Good citizens willing to serve on city committees are hard to find, given the demands on peoples’ time and the expectations for citizens working on city committees and commissions. These are voluntary positions, some of which take quite a lot of time and effort to fulfill the demands of the position. Nurturance of committee members should be an expectation of city council liaisons in particular, and of all city council members. Since some of these volunteers may not have served in such a capacity prior to their appointment here, there may be some rough edges that need to be smoothed out over time. Committee protocol, understanding of process, boundaries related to the use of city email accounts, expectations of civil behavior are areas where problems could be noted. And when they are, it is incumbent upon the elected official to meet with the committee member and discuss what constitutes appropriate behavior in these situations. In the instant case, it is not clear that such discussions were held. Normal standards of ethical behavior as they relate to respect for citizens, fairness in the application of process, and recognition of the contributions of citizen committee members, may have been disregarded. This can be a problem for the city, as it sends a message to other citizens that their service on a city

committee may subject them to hurtful public rebuke and reprisal without due process – and who wants to set themselves up for that? It is important to coach and educate the people who are appointed to city boards, commissions and committees. The City Council must take steps to establish a better process for dealing with situations such as this – a process that is fair, equitable, transparent, and respectful of the citizens who volunteer for the city.

ⁱ Practices to Promote the ASPA Code of Ethics, approved 3/16/13.

ⁱⁱ Williams, Yohuru, “A Matter of Integrity: Civility and Political Discourse.” Insights on Law and Society, 13 Winter 2013

ⁱⁱⁱ Williams, *ibid*, p. 4

^{iv} Williams, *ibid.*, p. 5