

City of Norwich, Connecticut
Ethics Commission
Ruling, Case 2011-1

History of the Complaint

Complaint 2011-1 was submitted by Complainant Karen Neeley on May 4, 2011. The complaint alleges that the Rotary Club approached Barry Ellison, Director of Public Works regarding the use of the Chelsea Parade for a carnival to be held on May 21, 2011. Their request was denied due to lack of funding and a short time to re-seed the grass. The complaint further alleges that the VFW Chapter of Norwich approached Barry Ellison for a carnival on Chelsea Parade to be held on May 9, 2011 and was also denied.

The complaint alleges that, after being turned down by Barry Ellison, the VFW spoke to their member Peter Desaulniers, a Norwich Alderman, a VFW member, and a member of the Public Works and Capital Improvement Committee. He brought the request to the committee and then voted in favor of the VFW's use of Chelsea Parade. The Public Works Committee voted 2 to 1 to approve the VFW's request to use the Chelsea Parade for its carnival. Alderman Desaulniers voted in favor and his vote was one of two affirmative votes with regard to the approval of the VFW's request by the Public Works Committee. The complaint alleges that Alderman Desaulniers provided unfair and unequal treatment to the organization in which he is a member. The complaint questions whether Alderman Desaulniers has a conflict of interest and should have recused himself from the vote. It also alleges that this is a clear act of favoritism on the part of Alderman Desaulniers.

The complaint filed by citizen Karen Neeley follows logically from the publicly available facts pertaining to the issue. Alderman Desaulniers is a member of the VFW. Both the VFW and Rotary requested use of the Chelsea Parade. The Rotary was denied use of Chelsea Parade. VFW was ultimately granted use of Chelsea Parade, apparently at a meeting of the Public Works Committee where Alderman Desaulnier cast the deciding vote. Ms. Neeley's filing of an ethics complaint was proper, and highly courageous. On the face of the issue, two very worthy groups were competing for use of the same location and the decision was based upon the personal affiliation of a public official.

A subcommittee of the Ethics Commission agreed unanimously that the available facts constituted probable cause and warranted a public hearing. The eventual disposition of the issue should, in no way, diminish the value of Ms. Neeley's courage and social responsibility. The facts, as they were known prior to the hearing, suggested that an ethical violation may have occurred. The Declaration of Policy which begins Norwich Ordinance 1651, the most recent amendment of the Code of Ethics, states "The proper operation of municipal government requires that all officials and employees be independent, impartial and responsible to the citizens of the community; that government decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government." Accordingly, a public hearing of the facts pertaining to this issue was entirely appropriate.

After a finding of probable cause, the Code of Ethics requires that a panel consisting of five members or alternates shall hear the case at a formal hearing. In this case, three of the seven Ethics Commission members elected to recuse themselves because of a potential perception of partiality due to their own affiliations. This left four members available to sit for the hearing.

Both the complainant and the respondent agreed to a four member panel. The hearing panel was made up of hearing chairman Joseph Sastre, Tamara Lanier, Wayne Rosenfield and Marcia Marien.

A hearing was held on September 20, 2011 at 5:00 in room 335 of the City Hall. The following witnesses were present, sworn in, and testified:

- Karen Neeley, Complainant
- Peter Desaulniers, Respondent
- Barry Ellison, Director of Public Works
- Richard Delorge, Past Commander of the VFW
- Deb Hinchey, Alderwoman/ member of Public Works & Capital Improvement Committee
- Laurie Popovich, Alderwoman/member of Public Works & Capital Improvement Committee
- Arthur Sharron, VFW Member

Alderman Desaulniers was represented by his attorney, Thomas Londregan.

Entered as evidence and considered were the following: A related Norwich Bulletin Article and a letter provided by Mr. DeLorge.

Substance of the Complaint

The City of Norwich has no formal policy for use of the general public spaces in the City such as the Chelsea Parade. It is left to the discretion of the Public Works Director.

Barry Ellison, the current Public Works Director, clarified that the Rotary did not approach him with a request to use Chelsea Parade. Director Ellison became Public Works Director on September 20, 2010 replacing Joseph Loyacano. The complaint stated that the request was made in July 2010.

Karen Neeley could not add any testimony with respect to when the Rotary asked, or who the Rotary asked, to use Chelsea Parade for a carnival. She stated she is not a member of the Rotary. She was not a party to the case. She is a concerned citizen that read about the conflict in the Norwich Bulletin and filed a complaint. It is assumed that the Rotary approached the prior Public Works Director, Joseph Loyacano, and was told that they could not use Chelsea Parade. Since there is no formal policy, there is no known paper work to document if, when or who the Rotary might have approached. The complainant did not have any witness to provide testimony on this.

Sometime in the winter of 2010-2011, Commander Richard Delorge of the Norwich VFW asked Alderman Desaulniers how to request permission to use Chelsea Parade. Arthur Sharron, a VFW member, testified he witnessed this conversation. Mr. Sharron stated Alderman Desaulniers gave a listing of the departments that would need to be contacted. He stated that Alderman Desaulniers did not insert himself into the process as being able to help. He simply gave the facts of how this would be done in the City of Norwich.

Commander Delorge approached Director Ellison and asked to have a carnival on Chelsea Parade. Director Ellison denied the VFW's request and listed a number of reasons including the trash, electricity, parking, access to bathrooms, and the grass. Commander Delorge did not consider this a denial. Instead, he considered this a listing of problems to solve. Commander

Delorge addressed each of Director Ellison's issues over the next few weeks and returned to Director Ellison with his request to use Chelsea Parade.

Director Ellison said he wanted to keep an open mind. He said the former Public Works Director's basic policy was that no one could use Chelsea Parade. Director Ellison believed he had the authority to make the decision, however, he knew that allowing Chelsea Parade to be used for such an event was a vast change in policy. Director Ellison stated he alone made the decision to put the concept of using Chelsea parade for such an event on the agenda of the March 9, 2011 Public Works and Capital Improvement Committee's agenda.

This testimony conflicts with Alderman Desaulnier's written response to the original complaint dated May 27, 2011, which states that he asked to have the issue put on the agenda of the meeting after Director Ellison first approved and then denied the VFW's request. None of the witness testimony supported Alderman Desaulnier's written response to the complaint.

Director Ellison stated he denied the request initially. In the initial conversation, he gave a listing of reasons for denying the request, but it was definitely a denial of the request. Once it was approved, it was never changed.

Commander Delorge also stated that the decision was never approved and then denied. He did go into Director Ellison's office. He did get a listing of problems. He did meet with a series of individuals to solve those problems. He did go back to Director Ellison with those solutions. Commander Delorge stated that Director Ellison never changed his mind after that second meeting when it was approved.

The March 9, 2011 Public Works and Capital Improvement Committee meeting was attended by Director Ellison, Alderman Desaulniers, Alderwoman Hinchey and Alderwoman Popovich. All four testified that they were unaware of the previous decision to deny the Rotary the use of Chelsea Parade for their carnival at the time of this meeting nor did they discuss this at the meeting.

This also conflicts with Alderman Desaulnier's written response to the original complaint which stated that Mr. Ellison changed his mind with respect to the VFW request because another group had already been denied the use of Chelsea Parade.

As discussed earlier, there was no corroborating evidence from either Director Ellison or Commander Delorge that Director Ellison approved and then denied the request. The opposite seems to be the case. Director Ellison denied and then approved the request after Commander Delorge solved each of the reasons Director Ellison gave for initially denying the request.

All the witnesses testified that they did not know of the Rotary's request at the time of the meeting and, therefore, did not discuss that request. The minutes of the Public Works and Capital Improvements Committee meeting did not mention any other organization's request to use the Chelsea Parade.

Director Ellison stated that he found out about the Rotary's request and denial for the use of Chelsea Parade in the end of April at about the same time the newspaper article came out. He found out when the President of the Rotary, Bonnie Hong, came into his office to complain. The complainant did not have any firsthand knowledge of any of these facts.

It is unclear what the exact motion was at the March 9, 2011 Public Works and Capital Improvement Committee meeting, as it was not documented in the minutes. It is unclear if this was a motion for the general concept of having events on Chelsea Parade or if it was a motion for the specific VFW event. Director Ellison firmly believes he had the authority to make this decision and merely brought this to the Committee in an attempt to receive support for this new policy – that of allowing the use of Chelsea Parade for events of this type.

The Question of Jurisdiction

The Norwich Code of Ethics applies to “members of all departments, boards, commissions, committees or other agencies of the City of Norwich, including the City Council, whether they be elected or appointed, paid or unpaid, full or part time, and all classified employees of the City of Norwich”. The Respondent, Alderman Desaulniers, is a member of the City Council. The Norwich Code of Ethics clearly applies.

Findings of the Ethics Commission

The complaint alleges a violation of Section 2-53 Fair and Equal Treatment under subsection a. This subsection states:

Use of Public Property - No officer, official or employee, unless so authorized, shall use or permit the use by others of city-owned property or publicly funded labor or service for personal convenience or profit.

Although this section was checked on the original complaint, there were no allegations that Alderman Desaulniers personally profited or benefited from the VFW's use of the Chelsea Parade. No evidence was noted during the hearing to believe that he did.

The complaint also alleges a violation of Section 2-53 Fair and Equal Treatment under subsection b. This subsection states:

Impartiality – No officer, official or employee shall grant any special consideration, treatment or advantage to any person beyond that available to all citizens.

All of the sworn testimony indicates that, at the time of the decision to allow the VFW to use Chelsea Parade, no one knew of a second group that had asked to use Chelsea Parade for a carnival in the same month. The decision was not in favor of one group over another. In addition, the one respondent, Alderman Desaulniers, would be unable to make that decision alone.

Although the complainant did not check the box on the form, the complaint alleges a violation of Section 2-54 Conflict of Interest under subsection e. This subsection states:

Disclosure of Interest – Any officer, official or employee who has an interest in any matter concerning the City shall publicly disclose the true nature and extent of such interest and shall disqualify himself or herself from participating in such matter, if such interest is significant.

Alderman Desaulniers is a member of the VFW. Both Commander Delorge and Alderman Desaulniers testified that he has not been an active member for a number of years. He is not an officer and does not attend the meetings. He and his wife occasionally go to events

sponsored by the VFW. Alderman Desaulniers does not believe this constitutes a significant interest in the VFW. We agree.

For these reasons, the Ethics Commission finds no violation of the City of Norwich Code of Ethics in this complaint against Alderman Desaulniers.

However, in the wake of our investigation we would like to make the following recommendation to the City Council and City Manager:

The City should have formal written procedures to request the use of City property such as Chelsea Parade. The procedures should be easy to follow and include a request form that can be obtained from the city's web site. The procedures should clarify who has the final authority to make the decision and a method of documenting these requests for future reference.