

In attendance: C. Iino, L. Annino, Jr., E. Blewett

Visitors: S. Anziano, L. Ruderfer, M. O'Toole, D. Venuti, K. Zandi, D. Mooney, G. Murray, R. Rimmer, R. Regolo, A. Stirna, L. Hogarty, M. O'Toole, N. Gorski, W. Linsley, S. O'Brien, W. Adametz, C. Judge, L. Lefko

1. The meeting was called to order at 7:00 p.m.

2. Public comment

Resident Clark Judge asked the BOS to weigh in on the potential sale by the Boy Scouts of America of the Deer Lake Property on Paper Mill Road. Iino noted that state political leaders were meeting with the BSA; Judge reported that Senator Cohen referred to it as an "emergency situation." Iino underscored the urgency in terms of preserving open space, and in the continuance of the camp program run by longtime residents Mark and Patty Clifton. Annino emphasized that preserving such parcels is a cornerstone of the town Plan of Conservation and Development. There was discussion.

Board of Finance member Annie Stirna inquired about an unresolved issue with the Board of Education regarding \$1.5 million in funds due to be returned to the towns. Joint meetings are being organized.

Suzanne Anziano read a letter of support for reinstating the Children's Librarian position (letter attached) at the Killingworth Public Library.

3. Department/Board of Education reports

Monthly Building and Health department reports were distributed, but not discussed.

BOE Liaison Kathy Zandi reported on:

- School reopening plans, mask policy
- Strategic plan, focus groups and survey
- Nurses Union Contract – addition of LPNs
- HKYFS mentor program
- Summer maintenance and repair projects
- Website reminder

4. Approval of minutes of August 23, 2021

Annino moved to approve the minutes of August 23, 2021 amended as follows:

Item 5, line 2: Remove "with or without them." Iino also noted that she had misspoken in saying that neither party had submitted a recommendation. In fact, the Democratic Town Committee had recommended the appointment of Nikolas Franceschi-Hofman to fill the vacancy.

Item 7A Clarification: the BOS would refer to bidding regulations to determine next steps given that there were no bids submitted.

Item 8A, first line: add "in association with Hurricane Henri" after the word "shelter."

The motion, seconded by Blewett, passed unanimously

5. Refunds and abatements

Annino moved to approve the following 12 refunds and allow them to go the normal route for reimbursement:

• Toyota Lease Trust	20 Commerce Way	\$185.06	Overpaid COC#09996M
• Toyota Lease Trust	20 Commerce Way	\$111.37	Overpaid COC#10011M
• Toyota Lease Trust	20 Commerce Way	\$293.52	Overpaid COC#10113M
• Kelsey C. Withington	9 Jacob Lane	\$19.83	Overpaid COC#10156M
• Robert D. or Elisabeth W. Lane	153 Bar Gate Trail	\$16.41	Overpaid COC#10160M
• Gilbert A. Worrell	152 Burr Hill Rd.	\$41.55	Overpaid COC#10110M
• Donald B. or Marion S. McDougall	67 Alders Bridge Rd.	\$8.58	Overpaid COC#10132M
• William F./ Leigh H. Wajda	40 Woodland Trail	\$12.98	Overpaid COC#10139M
• Helena or Scott D. Erskine	169 Route 148	\$332.93	Overpaid COC#10145M
• Schoenly R. Lester	PO Box 622	\$538.20	Overpaid
• Toyota Lease Trust	20 Commerce Way	\$269.82	Overpaid COC#10138M
• Damon J. or Jody L. Rich	194A N Parker Hill Rd.	\$127.24	Overpaid COC#10165S

The motion, seconded by Blewett, passed unanimously.

6. Appointments

lino moved to reappoint Bruce E. Dodson (R) to the Historic Review Committee for a term ending December 31, 2021. The motion, seconded by Annino, passed unanimously. Dodson had failed to qualify in time for his recent appointment.

Blewett moved to appoint David J. Cutillo to the Inland Wetlands and Watercourses Commission for a term ending December 31, 2022. The motion, seconded by Annino, passed unanimously.

There were two candidates, Nikolas Franceschi-Hoffman, an unaffiliated resident, and Mr. Cutillo, who is a Republican. As the vacancy was created by the resignation of a Republican, Mr. Cutillo was given preference, as per the Town Charter.

7. Budget review

Regolo distributed the following YTD reports:

- Revenue Comparison thru 8/31/2021
- Actuals to Budget thru 8/31/2021
- Treasurer's Report
- Capital thru 8/31/2021
- Parmelee – Combined
- Parmelee – Special Activities

Blewett asked Regolo and lino to elaborate on the Water Testing line item. There was discussion. The board was informed that there will be a PFAS information session with DPH and DEEP for town campus employees. Water treatment options to remedy both PFAS and salt contamination will be explored.

8. Old Business

A. Charter Revision Commission

lino read from a letter from the town attorney (attached) stating that “based on the above facts and law [which take several pages], we are of the opinion that a member of the RSD17 School Board elected by the electors of Killingworth holds a public office in the government of Killingworth,” further clarifying that the makeup of the commission is not compliant with the statute limiting the number of town officials on a Charter Revision Commission to one third of the membership. Efforts to remedy the situation have been unsuccessful. Chairman Rimmer stated that now that 5 of the 7 members have been defined as public officials, the commission’s work must cease until compliance is achieved. No current members have volunteered to step down; he does not endorse expanding the board to accommodate additional new members.

The exceptional contribution from the current commissioners was acknowledged by all BOS members.

Annino moved to dissolve the Charter Revision Commission. The motion was seconded by Blewett. Voting in favor: Annino, Blewett Opposed: lino The motion carried.

B. Employee Manual

lino’s proposed corrections to the Employee Manual were reviewed and discussed at length. In the interest of time, Blewett moved to table further discussion. The motion, seconded by Annino, passed unanimously.

9. New Business

A. KLA Strategic Plan Update

Killingworth Library Board of Directors President Lucinda Hogarty reported that the library, a 501-3c and not a municipal library, had begun a strategic planning initiative before the pandemic. An ad hoc committee used survey results, focus groups, and data from comparable towns across the state. She then presented utilization figures and demographic data driving decisions supporting the plan. Elimination of the children’s librarian position was based on the severe decline in the 0-12 population and increased need for service to the 12-18 population. The board applauded the KLA’s impressive report. There was discussion, and Hogarty answered questions. No action was taken.

B. HKYFS Capital Request

Haddam Killingworth Youth and Family Services Director Laurie Ruderfer presented the organization’s appeal for financial support, after learning they will have to vacate their current, rent-free space on RSD17 property. The district has offered alternative spaces, which involve significant renovation costs. There was discussion. The board offered assurances that the BOS strongly supports the HKYFS mission and will investigate options. No action was taken.

C. Issue Invitation to Bid: KVFC Fire Truck

lino moved to Issue Invitation to Bid: KVFC Heavy Rescue Fire Truck. The motion, seconded by Blewett passed unanimously. Chief Venuti fielded questions from the board.

Due to the time, comments were abbreviated:

10. First Selectwoman's comments :

A. Parmelee Panels: Bidding regulations indicate that when no bids are received, the First Selectman can pursue vendors. This effort revealed that prices have increased significantly since initial inquiries. Parmelee Farm Committee has put the panel project on hold.

B. First Responder Service Plan: lino reported good progress, waiting for actuarial numbers.

C. lino is trying to convene the Economic Recovery Committee next week.

11. Selectmen's comments

A. Blewett expressed appreciation for KLA update, and would like to see similar feedback from all boards and committees

B. Blewett suggest the BOS invite representatives from the Killingworth Krier to attend an upcoming meeting to discuss current financial needs.

C. Blewett expressed urgency to address the Town Hall renovation, the Fire Company needs assessment, and the town barn renovation.

D. Annino asked lino to contact town engineer to address the road failure at the recently reconstructed section of Green Hill Road.

12. Adjournment

Blewett moved adjournment at 10:07 p.m. The motion, seconded by Annino, passed unanimously.

Respectfully submitted by Elizabeth Disbrow on 9/20/21.



Attachments: Letter from Atty Tycz dated 9/9/21.

Letter to Killingworth Library Association Board of Directors dated 8/21/2021



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TO: Dawn Mooney, Town Clerk
FROM: David J. Tycz, Esq. and Jonathan Porzuc, Esq.
DATE: September 9, 2021
RE: **Incompatible Offices**

You have asked whether an elector of the Town of Killingworth may concurrently serve on both the Board of Selectmen and the District 17 Regional School Board (the “RSD17 School Board”). We have determined that a related question is whether an elector may stand as a candidate for both the Board of Selectmen and the RSD17 School Board on the same ballot. It is our opinion that concurrent membership on the Board of Selectmen and the RSD17 School Board is incompatible under the Killingworth Town Charter, but that a candidate may stand for election for both offices on the same ballot.

Concurrent membership on the Board of Selectmen and the RSD17 School Board is incompatible under the Killingworth Town Charter

Under Killingworth Charter §6-1, “No member of the Board of Selectmen shall, during his/her term in office, hold or be appointed to any other office, board, commission, or position of employment in the government of Killingworth, except as may be specifically provided for in other sections of this Charter.” There is no other section of the Killingworth Charter allowing an exception for members of the RSD17 School Board.

As an initial matter, membership on a school board is a public office because such a position “is a trust conferred by public authority for a public purpose, and involving the exercise of the powers and duties of some portion of the sovereign power.” (Citations omitted.) *Murach v. Planning & Zoning Commission of City of New London*, 196 Conn. 192, 196 (1985). The Connecticut Federal District Court has held that members of a regional school board can be described “as government officials in every relevant sense of the term.” *Baker v. Regionall High School District No. 5*, 520 F.2d 799, 801 (2d Cir. 1975).

Therefore, the essential issue is whether a member of the RSD17 School Board elected by the electors of Killingworth is to be deemed part of the “government of Killingworth.”

Under Connecticut law, municipalities effectively split power to regulate public schools with the state. “Town boards of education, although ... agents of the state responsible for education in the towns, are also agents of the towns and subject to the laws governing municipalities.” *Cahill v. Board of Education*, 187 Conn. 94, 101 (1982). The dichotomy wherein boards of education are deemed to be agents of both the state and the municipality rests on the fact that the state retains some regulatory control over local boards of education but also that “the state has delegated to the municipalities other duties related to its educational obligation.” *Board of Education v. New Haven*, 237 Conn. 169 (1996). In sum, whether a board of education is acting as an agent of the state or an agent of the municipality depends on the nature of the activity in question.

Because a school board exercises municipal powers through some, if not all, of its actions, the individual members of the board are the conduits through which such municipal control is exercised. “The members of local boards of education are vested with the powers of their office by municipal action pursuant to municipal elections, the town charter, or appointment by an elected officer or body of the municipality.” *Cheshire v. McKenney*, 182 Conn. 253, 259 (1980).

In the case of *Cheshire v. McKenney*, the town of Cheshire challenged the right of a town councilman to hold his public office while also employed as a teacher in the town’s public school system. *Cheshire v. McKenney*, 182 Conn. 253 (1980). In that case, the charter of the town of Cheshire stated: “No member of the Council shall hold any office or position of profit under the government of the Town of Cheshire.” The Connecticut Supreme Court held that the councilman was in violation of the charter provision. The Court reasoned that “...we have expressly held that members of a local board of education are officers of the town they serve and that the persons employed by them in the performance of their statutory functions are employees of the town.” *Id.* at 259. Moreover, since such persons employed by local boards of education could not be deemed employees of the state, the Court concluded that “local boards of education act on behalf of the municipality they serve as well as in fulfillment of their state mandates and that their professional and nonprofessional employees are employees of the municipality and are subject to valid provisions of the municipal charter.” *Id.* at 260.

In *McKenney*, the Supreme Court ruled that membership on the town council with concurrent employment as a teacher by the local school board was impermissible under Cheshire's charter because employment by the school board was deemed to be a position "under the government" of the town. If employment by the school board as a teacher was deemed a government position in the *McKenney* case, it is only reasonable that a court would find that membership on a school board itself would be within the town government.

We also consider whether the fact that the RSD17 School Board is a regional board of education would somehow alter the conclusion that a school board member is in the government of the Town. We have not found any caselaw or authority directly on point as to this issue. However, we are most persuaded by the discussion and analysis of the Connecticut Supreme Court in *Rettig v. Town of Woodbridge*, 304 Conn. 462 (2012). That case involved a regional animal control district, but the Court's analysis was based on the analogy to regional school districts "whose affairs are run by a regional board of education comprised of representatives of the towns participating in the regional school district." The Court stated that its decision was "dictated" by its prior precedent related to boards of education, including *Cheshire v. McKenney*, 182 Conn. 253 (1980) and *Wallingford v. Board of Education*, 152 Conn. 568 (1965) (holding that members of a local board of education are officers of the municipality they serve and that employees of the district board are employees of the municipality).

In *Rettig*, the Connecticut Supreme Court affirmed a decision of the Superior Court and endorsed the lower court's analysis. The Superior Court's analysis stated: "Various statutes that are applicable to boards of education reference 'local or regional board of education.' For example, General Statutes §§ 10-220, 10-221, 10-222, 10-226, 10-227, 10-228, 10-229, 10-230, 10-231, 10-232, 10-237, and 10-239. Inasmuch as the legislature has deemed local and regional boards of education identical, there is no logical reason to conclude that an employee of a regional board of education would not be an employee of the towns that participate in the regional board of education." *Rettig v. Town of Woodbridge*, Docket No. X10UWYCV075005102S (Conn. Super. Ct. May 18, 2009).

On appeal, the Connecticut Supreme Court endorsed the analogy and analysis of the board of education comparison and stated: "Just as local boards of education exercise their authority on behalf of the municipalities they serve, so, too, do the members of the [regional] district board exercise their authority on behalf of the defendant towns." *Rettig v. Town of Woodbridge*, 304 Conn. 462, 478 (2012).

The Supreme Court went on to acknowledge the unusual dichotomy that exists for boards of education related to their dual agency on behalf of the state and a municipality, and noted that past attempts to exploit that dichotomy to some advantage have been rejected, and the Court instead has upheld the nexus to the municipal government. The Court explained:

Indeed, it bears emphasis that the issue of whether an employee of a municipal board is also an employee of the municipality served by the board has arisen only in the context of boards of education. That the issue has arisen at all stems from the fact that “our jurisprudence has created a dichotomy in which local boards of education are agents of the state for some purposes and agents of the municipality for others.” . . . [Citations omitted.]

Thus, on those few occasions when we have considered the issue, it has been in connection with an effort—either by the employee of a board of education or by a board of education itself—to exploit this dichotomy to some advantage by claiming that board of education employees are employees of the board alone rather than the municipality served by the board. See, e.g., *Board of Education v. State Employees Retirement Commission*, 210 Conn. 531, 543–45, 556 A.2d 572 (1989) (determining whether board of education employees were employees of municipality such that their wages were subject to social security taxation); *Cheshire v. McKenney*, supra, 182 Conn. at 257–61, 438 A.2d 88 (determining whether board of education employee was employee of municipality and therefore subject to local charter provision prohibiting municipal employees from serving as members of town council); *Mase v. Meriden*, supra, 164 Conn. at 66–67, 316 A.2d 754 (determining whether board of education employee was employee of municipality for purposes of applying exclusivity provision of act). We rejected this claim in each of the foregoing cases, concluding that the board’s dual agency in no

way undercut the employer-employee relationship between the municipality and the board's employees. *Rettig*, at 478–79.

In *Rettig*, the Supreme Court concluded its reasoning by stating:

Finally, it is axiomatic that municipal boards and agencies are extensions of the towns they serve, created for the purpose of performing those functions that towns are statutorily required or permitted to perform. See, e.g., General Statutes § 7–193(b) (“[e]ach municipality may have any municipal officers, departments, boards, commissions and agencies which are specifically allowed by the general statutes or which are necessary to carry out any municipal powers, duties or responsibilities under the general statutes”). They are, in effect, alter egos of the towns. The district animal control is no different. Indeed, the only thing that distinguishes it from a single-municipality agency or board, tasked with performing the same quintessentially municipal function, is that the district animal control serves more than one town. That its structure or organization may differ on account of this fact does not alter its fundamental character as an agent of the defendant towns. *Rettig*, at 482.

We also find instructive another Connecticut Supreme Court decision wherein the Court refused to exempt the RSD17 School Board from a statute based on any distinction between “regional” and “local” status. In *Sweetman v. State Elections Enforcement Commission*, 249 Conn. 296 (1999), the Supreme Court affirmed a decision by the SEEC that the board of education of Regional School District 17 violated the statutory prohibition on the expenditure of municipal funds when it published a pamphlet found to advocate for a proposed referendum question. The Court explained:

[T]he [regional board of education] argue[s] that “[t]he proposed district budget ... is not a *local* proposal or question [contemplated by § 9–369b], but a *regional* proposal or question; it affects residents in more than one municipality.” (Emphasis in original.) This distinction between local and

regional proposals finds no support in the text of either § 9–369b or any other statute that the plaintiffs have called to our attention. For purposes of § 9–369b, the antonym of “local” is not “regional.” Rather, the relevant antonym is “state.” See, e.g., General Statutes § 10–220(b) (distinguishing “educational goals for ... local or regional school district[s]” from “state-wide goals”). In other words, the proposal was “local” as that term is used in § 9–369b—as opposed to statewide—because it involved the voters of only two municipalities. The fact that the proposal could also be characterized as “regional” neither prevents the proposal from being local nor exempts the plaintiffs from complying with the requirements set forth in the statute. *Sweetman*, 249 Conn. at 311.

The Supreme Court also rejected the argument by Regional School District 17 that it did not expend municipal funds on the pamphlet and stated:

The [regional board of education] argue[s] that, “[o]nce funds are received by the regional school district—from whatever source—they become the funds of the regional school district. They are no longer municipal funds.” The [regional board of education] have supplied no reason in law or logic in support of this notion of fiscal transubstantiation, and we are unable to discern any. By definition, regional school districts are composed of two or more municipalities. They are funded by municipal tax dollars. *Sweetman*, 249 Conn. at 310.

As the Supreme Court stated, the regional school district controlled by the members of the RSD17 School Board is funded, in part, by Killingworth taxpayers. Killingworth electors elect members of the RSD17 School Board. Vacancies on the RSD17 School Board are filled by vote at a Killingworth Town Meeting. The organic law of Killingworth, its Charter, addresses the RSD17 School Board in several instances, including in Section 4-15, which provides:

The Town shall elect five members to the District 17 Regional Board of Education, subject to such future adjustments as are

necessary to insure balanced representation of member towns. Members elected to the Regional Board of Education shall serve four years each, and vacancies on the Board shall be filled by vote at a Town Meeting, as provided for in Section 10-46 of the Statutes, to serve until a successor is chosen and qualified at the next municipal election, at which time a successor shall be elected to serve any unexpired portions of that term.

Based on the above facts and law, we are of the opinion that a member of the RSD17 School Board, elected by the electors of Killingworth, holds a public office in the government of Killingworth and, therefore, may not also simultaneously be a member of the Board of Selectman, pursuant to Killingworth Charter §6-1.

A candidate may stand for election to two incompatible offices.

Having determined that concurrent positions on the Board of Selectmen and RSD17 School Board are incompatible, we must determine whether Connecticut law precludes a candidate from standing for election for both offices on the same ballot. It is our opinion that a candidate may stand for election to incompatible municipal offices, but if the candidate is elected to such offices for concurrent terms, the candidate must decline one of the conflicting offices.

As an initial matter, there are several states which explicitly prohibit candidates from running for multiple public offices, including Florida, Colorado, Illinois, and Oregon, among others. Connecticut does not appear to have any such restrictions.

Rather, under General Statutes § 9-322b, the legislature has provided: “if a candidate is elected to two or more offices in a municipality at the same election and is prohibited by any provision of the general statutes, a charter or an ordinance from holding more than one such office, the candidate shall notify the registrars of voters and the municipal clerk of the office to which the candidate declines election, and the candidate for such office who receives the next highest number of votes at such election shall be deemed to have been elected to such office.” (Emphasis added.)

General Statutes § 9-322b effectively codifies a common law rule: “[u]nder the common law, it is well settled that a person may not simultaneously hold two offices which

are incompatible, and when one accepts and qualifies for a second office which is incompatible with the first, he vacates, or by implication resigns, the first.” *Stolberg v. Caldwell*, 175 Conn. 586, 605 (1978).

In similar instances, Connecticut courts have ruled that the holder of one office is not barred from standing as a candidate for an incompatible second office, “but that before he could assume the duties of the latter office he was required to remove the statutory disability by resigning the office of selectman.” *State ex rel. Butera v. Lombardi*, 146 Conn. 299, 305 (1959).

With respect to elections for state offices, the Office of Legislative Research has provided the opinion that “[a]n individual can run for different offices, giving voters the option to elect the person to either or both offices.” However, if the offices to which one candidate are elected are incompatible, that candidate is prohibited “from being sworn in and holding two different offices.” OLR Research Report 2000-R-0860, RUNNING FOR TWO OFFICES, Mary M. Janicki, Assistant Director, August 31, 2000. We see no reason that the same principles and analysis should not also apply to the elections for municipal offices.

8/21/2021

To the Killingworth library board,

We are concerned about the elimination of the Children's Librarian position. The children/youth of Killingworth deserve a dedicated librarian to serve this population.

When Gayle Byrne was terminated by you in July 2020, the pandemic was in full force and life was different. Although we are not aware of your reasons for firing Gayle, we cannot imagine how the library board could think the library would be a better place without her or a qualified person in the Children's librarian position.

While our children were growing up, we relied on the children's programs for early education, literacy, and socialization. Walking into the library and being greeted by Gayle made us all feel like it was our second home. Gayle's resources and knowledge has made an impact on so many. She remembered all the children's names, what types of books they liked, and made many wonderful recommendations. Children benefit from this type of environment tremendously. The next generation needs programs where they can unplug, jump into a world of fantasy, learn, and make friends. These children need a dedicated librarian available to foster this growth.

In June, we created a Change.org petition to see if others in the community felt as we do. Well, 612 people signed the petition which shows that the community at large feels that the Children's librarian position is as important as we do. Here is the link for this petition https://www.change.org/p/killingworth-connecticut-bring-back-the-killingworth-children-s-librarian-position?recruiter=1213979139&utm_source=share_petition&utm_medium=facebook&utm_campaign=share_petition&utm_term=share_petition&recruited_by_id=48e3e7d0-db34-11eb-a4a6-41adec236ca2&utm_content=fht-29675302-en-us%3A2

Please follow to this link to see the entirety of this petition and the comments shared by our neighbors. Here are a few comments that sum it up:

Written by Jennifer Malaguti: "I grew up in Killingworth and my parents still reside there. I now live in a neighboring town with a library reminiscent of the Killingworth one of my youth: not very impressive. Once I had children, we started coming to the Killingworth Library and it quickly became a requested destination by my children. Gayle was a big part of that. It's a nice selection there still, but the spark that Gayle brought is missing and we haven't found ourselves visiting anymore. Gayle also helped me find or recommended books for topics I was teaching in my classroom. She is such a valuable resource and an asset to Killingworth Library. She helps make the library stand out not just for residents, but to surrounding communities as well."

Also, a comment written by Connie Bombaci: "The position of our amazing children's librarian Gayle Byrne, should have never been eliminated. Towns smaller than

Killingworth employ qualified librarians - sometimes two - to serve young learners and their families. Killingworth has taken many steps backward. This injustice must be corrected.”

There is a large amount of support for this position and Gayle Byrne.

In researching surrounding and similar towns, we were unable to find another library that did not have a dedicated children/youth librarian.

As far as financing a children’s librarian position, it appears that the Library continues to receive the same amount of funding from the town when this position was intact. If financially the library is struggling, fundraising for this position should not be difficult with such overwhelming endorsement. In fact, one community member offered to personally fund Gayle’s position in a facebook comment! We have some ideas for fundraising and would be willing to help as needed.

Thank you for sharing this and discussing at the August library board meeting. We eagerly anticipate follow up questions or outcomes. We have had a number of inquiries from towns people, and we would like to follow up with them as soon as possible.

Sincerely,

Sue Anziano and Gena Murray