

Kieran M. Ryan [Stamford Board of Representatives, (R), District 1]  
345 Stamford Avenue  
Stamford, CT 06902  
(203) 536-0487

Colleen M. Murphy  
Executive Director and General Counsel  
Connecticut Freedom of Information Commission  
18-20 Trinity Street  
Hartford, CT 06106

December 20th, 2016

VIA E-MAIL: [colleen.murphy@ct.gov](mailto:colleen.murphy@ct.gov); [foi@ct.gov](mailto:foi@ct.gov); [mary.schwind@ct.gov](mailto:mary.schwind@ct.gov)

RE: Petition for Declaratory Ruling from J. R. McMullen

Dear Ms. Murphy:

I submit this letter in support of the above referenced Petition as an interested party and respectfully ask, in concurrence with the Petitioner, that the Commission declare, in accordance with such Petition, that the Stamford Board of Representatives cease and desist from unlawfully barring the ex-officio members of the various BOR committees from attending executive sessions of such committees, and that said ex-officio members of the various committees thereby be permitted to attend executive sessions of those committees, as mandated by C.G.S. § 1-231.

This is also a response to the Objection by attorney Michael S. Toma to the above referenced Petition, attached hereto, and filed via email on November 10<sup>th</sup>, 2016.

A. Ex-Officio Status Conferred as a Matter of Local Law

In FIC 90-350, the Commission held that an ex-officio member of a body is entitled to attend the executive sessions of such body. That is settled law and is not in dispute. Further, the undersigned grants the proposition that it is a matter of local law as to “whether a member of a municipal board is an ex-officio member of any of that board’s sub-units.” There is no dispute of that proposition, and yet to raise it as being determinative as attorney Toma has done is merely to elevate a form-over-substance red herring that ignores the reality: the Stamford Board of Representatives’ (“BOR”) ‘Rules of Order’ already have conferred ex-officio committee status on all BOR members, despite the lack of textually employing the exact term “ex-officio” in doing so.

The definition of the term “ex-officio” is:

“A member of a body (a board, committee, council, etc.) who is part of it by virtue of holding another office. The term is Latin, meaning literally "from the office", and the sense intended is "by right of office"; its use dates back to the Roman Republic.”

[[https://en.wikipedia.org/wiki/Ex\\_officio\\_member](https://en.wikipedia.org/wiki/Ex_officio_member)] (emphasis added); See also Black's Law Dictionary, 8th Edition, 2004.

The BOR Rules of Order state in pertinent part that: "all members of the Board of Representatives shall have the right to attend and to participate in any meeting of any committee of which they are not regular members, but without the right to vote." This statement unequivocally communicates that such members are "ex-officio." Granted, nowhere in the preceding quoted sentence is the word "ex-officio" used. However, the status conferred conforms precisely with the definition of what it means to be an "ex-officio" member of a body. The ex-officio members have every right conferred upon every specifically appointed member of any committee, but for the right to vote, and they gain those rights by virtue of their membership on the BOR generally. That is the literal definition of the word "ex-officio" and it applies by all logic and reason to the members of the BOR.

It is not reasonable to assert that because the exact word "ex-officio" was not uttered, that the essential defining elements of the term itself were not conferred. They expressly were. No linguistic loophole exists; the phrasing could not have been more straightforward and precise. The "by virtue of their BOR membership" committee status conferred on all BOR members by the BOR Rules of Order is the very essence and definition of the term "ex-officio," despite that exact word was not used.

Words are employed as shorthand to convey meaning; they do not exist as the thing itself. A word on a restaurant menu is not the entrée. Or, if an authority were to suffer a convict to incarceration for a term of years and yet not utter the word "sentence" in the decree, it is a sentencing nonetheless. To pedantically insist that an exact word must be used to confer the rights and privileges inherently conferred by the act of the grant itself is to elevate form over substance and to frustrate the plain reality of the affairs of the office and the purpose thereof.

B. The FIC has not required that the actual word "ex-officio" be used in order to confer the essence of the thing that word conveys

In support of the above, the undersigned respectfully submits FIC 90-482, "Matter of a Complaint by Trenton E. Wright, Jr., Complainant against Daniel Lein, First Selectman, Town of Windham, et. al., Respondents, October 9, 1991," where the Commission held that the first selectmen "is an ex-officio member of the respondent committee [Windham Board of Selectmen Utilities Committee] in accordance with section V-2 of the town charter."

Section V-2 in of the Windham town charter, is reproduced in full below:

"§ V-2 The Mayor. Except as otherwise provided in this Charter, the Mayor shall have no executive or administrative authority, but shall serve as the official representative of the Town for all ceremonial purposes. With effective input from Town Council members if it is timely provided, the Mayor shall, with the Town Manager, prepare the agendas for all regular and special Council meetings. If present, the Mayor shall be the presiding

officer of any such Council meeting. The Mayor shall also chair the three-member Nominating Committee established per Chapter V-3 of this Charter. Should the mayoral position become vacant prior to the next election, the Town Council shall schedule a special election, open to all qualified electors, to be held within ninety (90) days after the mayoral position becomes vacant.”

A careful reading of § V-2 reveals that nowhere therein is the term “ex-officio” uttered – and yet, because by being a member of the Town Council, by virtue of such membership, the mayor is an ex-officio member of the respondent committee. To hold otherwise, and to base any such holding on the notion that the actual word “ex-officio” was not used in § V-2 would have frustrated the essential interactive relationship of the deliberative body and elevated form over substance to an absurd result. Of course, in its wisdom, the Commission did not so hold.

C. Exceptions and/or Limitations of the FOI Act must be Narrowly Construed and Favor Disclosure

The Supreme Court of Connecticut in City of Stamford v. Freedom of Info. Comm'n, 241 Conn. 310, held in 1997 that:

“In conducting our review, we are also mindful of the purpose of the [FOI] act. The overarching legislative policy of the [act] is one that favors the open conduct of government and free public access to government records ... The sponsors of the [act] understood the legislation to express the people's sovereignty over the agencies which serve them . . . and this court consistently has interpreted that expression to require diligent protection of the public's right of access to agency proceedings. 'Our construction of the [act] must be guided by the policy favoring disclosure and exceptions to disclosure must be narrowly construed.'”(Citations omitted; internal quotation marks omitted.) Glastonbury Education Assn. v. Freedom of Information Commission, 234 Conn. 704, 712, 663 A.2d 349 (1995); see also Bona v. Freedom of Information Commission, 44 Conn. App. 622, 630, 691 A.2d 1 (1997). - City of Stamford v. Freedom of Info. Comm'n, 241 Conn. 310, 696 A.2d 321, 1997 Conn. LEXIS 179 (Conn. 1997)

Here, the Petitioner is not seeking unfettered open public participation in duly empaneled executive sessions of committees, but merely that the elected members of the BOR who populate its committees by virtue of their main office, in other words, the “ex-officio” committee members, be permitted to remain in the executive sessions of such committees. The Commission has already held as much, as in i.e., FIC 90-482. This is hardly an intrusive imposition that would test the of bounds public participation such that the limits of the Act would become unbalanced or impracticable. To the contrary, such an outcome would restore a small but important intended virtue of the FOI Act by ending the on-going violation that is the subject of the Petition, a violation which currently frustrates “the people's sovereignty over the agencies which serve them.” City of Stamford, supra at 712.

D. Response Attorney Toma's Objection Dated November 10, 2016

The gravamen of the Objection is that the “petition asks the Commission to interpret and opine on the rules of order of this municipal board” and that the “determination [it] ... seeks is one to be made on the local level.” The undersigned agrees that the local authorities ought to determine the status of BOR members vis a vis their relationship to its committees, and indeed, such local determination has already been made. As stated already above, the Petition does not ask the Commission to interpret local rules. The local authority has already enacted Rules of Order, and those are clear, beyond the need of any interpretation. The rules are perfectly clear in that they empanel BOR members as committee participants by virtue of their main elected office, the literal definition of a conferring of ex-officio status. The petitioner petitions the Commission declare that the BOR confirm to the dictates of C.G.S. § 1-231, nothing more. Clearly that is within the purview of the Commission.

The elected officials on the BOR are duty bound to vote on matters discussed and investigated at the committee level. Reports of committees submitted to the full board prior to votes are merely reports. Board members who are ex-officio members of committees, and who are currently barred from executive sessions of such committees, are therefore obligated to cast votes on important matters on which they have incomplete information. There is no is no compelling practical, legal, or moral reason to continue the current unlawful ex-officio committee member executive session prohibition. Why the city administration is frivolously expending valuable legal resources in the office of the corporation counsel to defend such a prohibition is as puzzling as it is disconcerting.

#### E. Conclusion

Members of the Stamford Board of Representatives are ex-officio members of its committees. This is so because, as is indeed appropriate, the local authority already made it so – not by explicitly using the exact word “ex-officio” in conferring such status, but by conferring on them the essential substance of the word: their status in committees exists by “virtue of their membership in another office.” That is what it means to be an ex-officio member. That is literally the definition of the word. The Commission has already ruled that ex-officio members of a body are entitled to attend the executive sessions of that body. Therefore, the undersigned respectfully requests the Commission to grant the Declaration contemplated by the Petitioner, J.R. McMullen.

Respectfully submitted,



Kieran M. Ryan  
Stamford BOR, (R), Dist. 1

**Cc Via email to:** [jrmcmullen.stamford18@gmail.com](mailto:jrmcmullen.stamford18@gmail.com); [KEmmett@StamfordCT.gov](mailto:KEmmett@StamfordCT.gov);  
[MToma@stamfordct.gov](mailto:MToma@stamfordct.gov); [ALivolsi@stamfordct.gov](mailto:ALivolsi@stamfordct.gov); [Thomas.Hennick@ct.gov](mailto:Thomas.Hennick@ct.gov);