

## Rules Committee Minutes

Honorable Council  
City of Newark, Ohio  
December 17, 2015

There was a meeting of the Rules Committee in Council Chambers on Monday December 14, 2015 after the Ways & Means Committee with these members present:

Doug Marmie, Chair  
Carol Floyd  
Marc Guthrie

We wish to Report:

1. Rule 14.1 was discussed

**Mr. Guthrie**-Mr. Chairman does there need to be a motion to bring it off of the table?

**Mr. Marmie**- not since it was set for a particular date.

**Mr. Guthrie**- I would like to make a motion to amend Rule 14.1. I am deleting some language based on some of Chair's comments at the last meeting. Maybe by deleting this language, maybe this language went a step too far. The way the rule currently reads is: all members of Council have a responsibility to be cognizant of existing Ohio Public Ethic Laws. The language that I am recommending that we delete in the form of an amendment is as well as keep abreast of the opinions interpreting such laws and all changes to such laws as they may occur from time to time. I think that does go a step too far, not that Council Members don't have an obligation to stay on top of things they will be if the legislation passes next week they will be taking a couple hours of training every two years that will certainly assist them with that. I noticed in our most recent Ohio Municipal League magazine that all of us got there was an excellent section in there on ethics. After you delete that language the rule goes on to say that if at any time a member of Council has a question or a concern regarding his or her action and how such action may be impacted by Ohio Public Ethics Laws and their sworn oath of office such members shall promptly seek guidance from the Ohio Ethics Commission including a written opinion regarding the proper legal and ethical course of conduct for such Council Member. Compliance with Ohio Public Ethic Laws is a personal responsibility of each Council Member and violations thereof are the personal responsibility of each Council Member. Violations of Ohio Public Ethics Laws may result in legal action against such Council Member at his or her own individual capacity as well as action against such Council Member pursuant to Charter Article 3.07 and Article 16.04. Council Members should be aware that decisions regarding compliance with Ohio Public Ethics Laws are personnel in nature and rely on guidance from anyone other than personal legal counsel or the written opinions of the Ohio Ethics Commission may not provide a defense to

allegations of ethical misconduct. I would move that we delete the sentence I referenced and move for the adopt of Rule 14.1

**Motion by Mr. Guthrie to amend Rule 14.1 to delete keeping abreast of the opinions interpreting such laws and all changes to such laws as they may occur from time to time, second by Mr. Floyd**

**Mrs. Floyd-** I know that it has been mentioned that we sort of say this when we take the oath of office and that we do get information on the Ohio Ethics Commission on the other hand if I have a question about something I might want to refer to the rules to find out what is actually the case. I think this is a benefit to us to have this in there. I do like the amendment. I like taking that out because to keep abreast of opinions of interpreting ethics laws at times gets very legal and complicated and I'm not sure that is something we all have the ability or knowledge to always do but I'm in favor of this addition to our rules.

**Mr. Marmie-** the section that says that if at any time a member of Council has a question or a concern regarding his or her action and how such action may be impacted by Ohio Public Ethics Laws and their sworn oath of office such members shall promptly seek guidance from the Ohio Ethics Commission including a written opinion regarding the proper legal and ethical course of conduct for such Council Member. I think that area being included in there is one of those that will possibly create some gotcha moments or adverse type of activity or just trouble. Because if somebody asks you if you abided by this rule all of that portion is a matter of privacy and that question can't really be asked. It is up to the individual and all of that information is of a private nature until there is a final finding so therefore to include that in there could be something that could be held against somebody if they answer yes or no to that question. I don't like that section in there. The rest of the deletion of what Mr. Guthrie has requested on the motion and if we deleted the section that I am indicating right here the rest of it is a restatement of things that are elsewhere. If we want to be redundant and restate what has already been stated than that is fine if that is the will of the Council but that additional section that I mentioned I just don't feel like it is anybody's position on Council or as Council rules that we should be enforcing that in any way shape or form because that is an individual's decision on when they should go and seek the opinion of the Ohio Ethics Commission. Even the last one I like the way that it is written about how it is their personal legal counsel or the written opinions of the Ohio Ethics Commission may not provide a defense. That is good information to know and I'm like Mrs. Floyd that is just informative information and I am fine with giving informative information but if we are trying to hold somebody accountable to having to go seek the opinion of the Ohio Ethics Commission I think we are over stepping our bounds. That is not our role. That is an individual's decision whether or not they choose to do that. Should they? Yes. Anything they question in their mind but we are told that from the beginning and I think we are going to be told that with our training that we are going to get every two years with the change in legislation that we included. I think that we are going to see a better response and folks will have more of an understanding because of that. I think that portion should also be omitted. It is up to Mr. Guthrie if he wants to include this in his. I won't vote for it because of that one statement. I can't support it because I think

that it creates a controversy. I am ok with being redundant if that is the will of the Council but I would hope that we would remove that section of it also. The final think is I think that we do need to make it Rule 14A instead of Rule 14.1 just to be consistent with our rules and the way the numbering goes.

**Director Sassen-** stated that it should stay 14.1 because there is no 14B to follow the A.

**Mr. Guthrie-** I don't favor deleting the language but I would be willing to change the word shall to should if that would accommodate you, your concern. We are creating a guideline with this. Yes of course we know that when we take an oath of office we are supposed to abide by the laws of the State of Ohio but public officials are going to jail all the time throughout this country who takes oaths of office. Basically what we are doing with Rule 14.1 is creating a guideline and it is sort of Council stepping up and saying we believe in this and that is why we want it as a part of our rules. I would be willing to change the word shall to should because we are creating a guideline on what a member of Council should do. One thing that I think I pointed out at the last Committee meeting was that I talked with the training folks at the Ohio Ethics Commission several times and they indicated that they can turn around an advisory opinion in a week because they have so many boiler plate opinions that fit circumstances in every community. To be honest with you the best guideline for any of us as public officials is very simple and that is whether it passes the smell test. This cleans up the terminology of using smell test. I would like to see uniform support for this. I think it is important for us as a Council to be as together as we possibly can be when we adopt a rule for sort of policing ourselves.

**Mrs. Floyd-** I could go along with changing shall to should

**Mr. Marmie-** what was just stated supports what my whole disagreement is with having this rule. It is a guideline it's not a rule and I agree with that and that is why I don't want anything that holds anybody accountable to something in this capacity because there are already measures for ethics to hold people accountable for it and they are strict with the Ohio Revised Codes and the Ohio Ethics Laws. Therefore we should not be the policing of those because there are already policing mechanisms in place. I agree this is a guideline not a rule. Again if it is the will of the Council to start putting guidelines into our rules then there are probably a number of guidelines that could come in the future. He asked the Law Director should and shall how does that change the meaning of that statement? Does it water it down so that it's not really enforceable?

**Law Director-** from a statutory construction stand point it is a fairly significant change and I understand your concern with regards to the language and the ramifications of how that butts up against the confidentiality of ethics processes. Honestly I think that word should probably changes that sufficiently to eliminate the vast majority of your concerns.

**Mr. Marmie-** I am going to support it with the change of should to go to full Council because I believe firmly that this is something the full Council should vote on. Will I vote of it and support it when it comes to full Council I still have to debate that in my mind and here is the reason why. I do feel like it is more of a guideline than a rule and I want to make sure the integrity of our rules are just that there is an integrity to it. Not that I don't think this is important. It is vitally important. The Ohio Revised Code and the Ohio Ethics Laws make it important our rule does not. Don't get me wrong what Mr. Guthrie

has done and what he has asked to be done with the education requirement you all know that I was in full support of that. Anything that we can do to enhance I am ok with but I don't think we need to police. The motion on the table to amend to remove the language Mr. Guthrie has indicated and also to change the word shall to should.

**Motion to amend passed by a vote of 3-0.**

**Motion to pass to full Council passed by 3-0.**

**Mr. Marmie-** I really appreciate Mr. Guthrie and what he has put together here. Thank you very much.

Doug Marmie, Chair