

Rules Committee Minutes

Honorable Council
City of Newark, Ohio
November 24, 2015

There was a meeting of the Rules Committee in Council Chambers on Monday November 23, 2015 after the Service Committee with these members present:

Doug Marmie, Chair
Carol Floyd
Marc Guthrie

We wish to Report:

1. **Ordinance 15-31** creating Chapter 218 of the Codified Ordinances of the City of Newark, Ohio, regarding mandatory ethics training for certain Elected and Appointed Officials was considered.

Mr. Guthrie- can I just make a motion to bring the amended version forward which I am assuming would be 15-31 A and then I can explain this and you can explain the amendment. What the ordinance does is it would basically require every two years Elected and Appointed Officials to have two hours of ethics training. The training can be done via the Ohio Ethics Commission or the Ohio Municipal League. My understanding from the Ohio Ethics Commission is that they conduct trainings of the Ohio Municipal League so it is basically by the Ohio Ethics Commission that trainings can be done on line, they also have webinars. I communicated again today with a Training Consultant and she indicated that they are willing to come to the community at no cost as long as you have 50 people who are willing to participate which I don't think would be a problem if we invite our neighbors. The other thing that was indicated was that if a member of Council of Official has an interest in an advisory opinion they can usually turn advisory opinions around in 7 days. That is the purpose of it and that is why I brought it forward.

Motion by Mr. Guthrie to bring the amended version forward, second by Mrs. Floyd

Mr. Marmie- the amendments are basically that it states Elected Officials and we wanted to make it clear that if someone is appointed to a position but not yet elected they too will also be required. We expanded the language to include elected and appointed to an elected position. The other thing that we added is that the Law Director is able to grant additional time if there are any circumstances that would cause someone to not be able to do it within the time frame. For example let's say the scheduling and the timing is just one month off he could grant the exception because the course that is being offered is one month away. We wanted to extend that not only to somebody who was newly appointed or elected but also to anybody that is required to do that because of what we have in the Charter. I don't know if it is really clarifying

enough and it would be very difficult to enforce this rule. Because measuring that cognizance, making sure that everybody has that information where I don't know about all of you right now but do you know the last 5 opinions that have taken place at the Ohio Ethics Commission? I would venture that almost everybody would say no because we don't. We may have heard of one that has taken place and I don't know that we need to keep up that closely. Again the violations of the public laws as far as the charter is written in the Charter. I really didn't see anything additional that is not already in place with this rule and all this rule does is makes it so we could be asked if we abided by rule 14.1? That puts the person who is really their ability is to keep all of their information confidential but it puts them in a situation to say where you lose whether you answer yes or no. If you say yes you are admitting you think you have a violation and if you say no or no comment you are saying it is confidential. We don't have to answer that question because of it and I think that this rule might put us into a bad situation. That is why I am not going to support it. It is up to the full committee I told Mr. Guthrie that. I said we were still going to hear the rule and all of Council will have the opportunity to voice in your opinions.

Mrs. Floyd- are you talking about 14.1 in the Charter?

Mr. Marmie- no in the rule. 14.1 is the new rule number. We might even want to change that to 14. A because it goes a,b,c but there is no current rule it would become 14.1 or 14.A.

Mr. Guthrie- the only point that I would like to make is that I don't think it is requiring members to stay up on every new opinion by the Ethics Commission. I think most of that we become aware of through the training process and the Ohio Municipal League's hands out bulletins periodically that can be helpful to us. As far as I think you asked a question, I want to make sure I had it right, Doug did you say that if someone asked you if you violated rule 14.1, is that the way you worded that question?

Mr. Marmie- or abided by it, either way.

Mr. Guthrie- someone could ask the very same question about the Ohio Revised Code Section and I don't know that right off the top of my head but whether you answered the question regarding the rule or answered the question regarding the Ohio Revised Code the code would trump the rule anyhow. The key word to me in the rule is that simply as public officials we have an obligation to be cognizant when ethic laws change which they aren't changing very much but there are new opinions coming out. That is what the Ethics Commissions duty is to make us aware of during the training process. I think there is substance to the rule, if there is a majority of Council feels that it needs tweaked in some way I am certainly open to that. I would have no objection if you want to hold this for the next opportunity for the Rules Committee if people want to chime in on modifying this language. Again, my motivation is for members of Council in their roles to basically embrace the Ohio Ethic Laws and I feel this does that. It was written well by Law Director Sassen however if the majority of Council would like to see it tweaked I don't have a problem with that just as I didn't have a problem with Mr. Marmie revising the legislation. Because I feel alright with the language now I would like to make a motion to adopt Rule 14.1 or if you want to change it to 14.A, Law Director established as 1.

Mr. Marmie- just to share with all of Council that is here, I find that it is difficult to measure cognizance as far as that first section all members of Council have a responsibility to be cognizant of Ohio Laws and opinions. I find that is difficult to do. The next area says that if at any time a member of Council has a question or a concern regarding his or her actions and how such action may be impacted by Ohio Public Ethics Laws and their sworn oath of office such member shall promptly seek guidance from the Ohio Ethics Commission including a written opinion regarding the proper and legal course of conduct for such Council Member. I think that is a personal issue. I don't think that is something that is a rule. Somebody who takes the oath of office knows the responsibility and knows that the Ohio Ethics Commission is there. To put it in there that it is a requirement, we can't ask there is no measurement because even if we ask the person doesn't have to respond and a failure of a response what is that going to start as far as any kind of conflict. The compliance with the Ohio Public Ethics Laws is the personal responsibility of each Council Member and violations thereof are the personal responsibility of the Council Member is already set in legislation and it is already part of the Ohio Revised Code. Violations to the Public Ethics Laws may result in legal action against the Council Member and also pursuant to Charter Article 3.07 and 16.04 that is already in place. If somebody violates anything or if there is any kind of an issue Charter has the right to remove the person from Council with the proper procedures. Again they should be aware the decisions regarding compliance with the Ohio Public Ethic Laws are personal in nature and are reliance on guidance from anyone other than personal legal counsel or the written opinions of the Ohio Ethics Commission may not provide a defense to an allegation of ethical misconduct. That in fact actually conflicts with the above statement that says that they have to seek the Ohio Ethics Commission and it also mentions personal legal counsel which you can and do have the right to talk to your own attorney and/or the Ohio Ethics. You can go either route just realize that the person who is making the judgement would be the best. Would you not agree the Ohio Ethics Commission makes the rules so why wouldn't you ask for their opinion. That is a personal opinion. Those are the concerns that I have. I talked to the Law Director about this; we talked about the oath of office and I tried to ask what in here is outside the oath of office? The biggest one is that the Council Member has to bring it forward to the Ohio Ethics Commission including the written opinion regarding the proper and ethical legal course. Well again I go back to the privacy thing. If somebody is asked did you abide by everything in Rule 14.A that just puts them in a bad situation in my opinion and we already have other laws in place. The Ohio Revised Code of course, our oath of office and in my opinion it is all the same except that one statement which I feel shouldn't even be in there. If we want to table this I think it is only fair that we hear this before Mr. Guthrie leaves office.

Mr. Guthrie- I don't have a problem tabling it. If I could make a comment before I motion it and that is part of this is trying to protect Council Members and give them guidance because I think there have been over the years when I was Council President I asked Doug a couple of times about ethics issues and he was always pretty quick to advise me that you really need to go to the Ethics Commission on ethics questions. I think it provides good advice if it needs to be tweaked like I said I am more than glad to

move at this time to lay it on the table for the Committee meeting in December.

Motion to table Ordinance No. 15-31 A by Mr. Guthrie, second by Mrs. Floyd

Motion passed by a vote of 3-0.

Doug Marmie, Chair