

MARTIN J. LAWLOR, JR.
ATTORNEY AT LAW

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Bethel, Connecticut 06801
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February 28, 2007

Re: **COMMITTEE ON GOVERNMENT ADMINISTRATION & ELECTIONS**
HOUSE COMMITTEE BILL NO. 5981

**AN ACT CONCERNING APPLICATION OF THE WAITING PERIOD FOR THE SWITCHING OF
POLITICAL PARTIES**

I am in support of implementing Committee Bill No. 5981 repealing C.G.S. §9-59 and substituting the language of Bill No. 5981.

At present, many municipalities including my own of Bethel, contain minority representation provisions for all municipal boards and commissions, both elected and appointed. Bethel's Charter sets forth limitations on the number of seats that the majority party may hold for any elected and/or appointed board or commission. In further support of the minority representation provisions, Bethel's Charter also states that vacancies in all elective offices and appointed boards are to be filled by the Board of Selectmen, "... by the appointment of a member of the same political party." As former Town Counsel of Bethel, I have had several occasions where I was requested to review potential appointments and appointments already made to boards and commissions to ensure that the same complied with Bethel's minority representation provisions in conjunction with C.G.S. §9-59. At all times I took the plain language of C.G.S. §9-59 "... shall not be entitled to ... the privileges accompanying enrollment in any party for a period of three months from the date of the filing of his application for transfer or for erasure." to mean that the transferee was not entitled to be appointed to any board or commission as a member of his/her new political party until three months had elapsed. To interpret the same in any other way is to emasculate the minority representation provisions and render them mere formalities in direct contrast to what the citizens of Bethel intended.

Over the past summer, a Bethel citizen was appointed to an elected board to fill a Republican vacancy. The citizen was a member of another political party, the Libertarian Party and transferred his enrollment to the Republican Party on July 24, 2006. On August 1, 2006, the Bethel Board of Selectmen appointed this individual to fill the Republican vacancy. On August 8, 2006 the individual was sworn in as a Republican member of the board. An objection was filed and a request to rescind its motion was made to the Board of Selectmen. The Selectmen referred the matter to then Town Counsel who ruled that this appointment did not violate the three month waiting period under C.G.S. §9-59. Generally speaking, Town Counsel took the

Martin J. Lawlor, Jr.
Committee of Government Administration & Elections
House Bill No. 5981
February 28, 2007

position that because the statute did not prohibit the individual from "enrolling" in another political party as the statute had been

previously written, being enrolled was tantamount to being a member of the political party which entitled him to immediate appointment to the board under his new party affiliation. Town Counsel further ruled that the only prohibition to the new transferee was not being able to vote in a caucus or primary for up to three months.

If Town Counsel's opinion is correct, what does the language "... shall not be entitled to ... the privileges accompanying enrollment in any party for a period of three months from the date of the filing of his application for transfer or for erasure." mean.? Town Counsel chose to ignore the plain language of C.G.S. §9-59 and was supported in his opinion by the attorneys of the Secretary of State's office who routinely interpreted the three month waiting period of a transfer to another political party to apply solely to a caucus or primary. Why is one portion of the statute entitled to enforcement and another portion of the statute conveniently overlooked?

Many municipalities through minority representation decided that it is not desirable for their government to be controlled solely by one party or another. These municipalities have concluded that the views and opinions of minority parties have merit which deserves to be heard. Minority representation allows others who are not part of the majority a forum in government to participate and contribute to society in conjunction with the majority party.

Whether you believe the interpretation of Bethel's Town Counsel as supported by the office of the Secretary of State is correct or not, to allow such an interpretation to continue renders municipal minority representation to exist in name only with no substance or meaning. Any time a vacancy occurs, the majority party may pack the board or commission with one of their own by simply having the individual transfer his/her party affiliation immediately before such appointment. Bill No. 5981 as worded would stop this abuse and assist the municipalities in their efforts to maintain and support minority representation. I urge this Committee to approve and forward this Bill No. 5981 on to passage by the General Assembly in the current session.

Sincerely,

Martin J. Lawlor, Jr.

MJLJR:cjl



BOARD OF SELECTMEN

Clifford J. Hurgin Municipal Center, 1 School Street
Bethel, Connecticut 06801 Telephone: (203) 794-8501

Robert Burke, First Selectman
Paul Szatkowski, Selectman
Patrick T. Wild, Selectman

MEMORANDUM

TO: Bethel's Registrars of Voters
FROM: Wendy Smith, Recording Secretary – Board of Selectmen *WJS*
RE: Appointment of Will Michael to Inland Wetland Commission
DATE: September 25, 2006

At the August 1, 2006 Board of Selectmen meeting, Will Michael was appointed as a Republican to the Inland Wetland Commission. Following that appointment, Attorney Martin Lawlor wrote to the Board of Selectmen challenging Mr. Michael's appointment (copy enclosed). At the August 15th Board of Selectmen meeting, William Hagan, Town Counsel, ruled that Mr. Michael was eligible to serve (copy enclosed). Selectman Wild disagreed with Attorney Hagan's ruling along with Registrar of Voters Mary O'Leary. Following that, Attorney Hagan contacted the Secretary of the State's office and spoke with Staff Attorney Theodore Bromley, who concurred with Attorney Hagan's ruling (copy enclosed). At the September 19, 2006 Board of Selectmen meeting, Attorney Hagan provided this information to the Board of Selectmen advising that Will Michael was a member of the Republican party when he was appointed to the Inland Wetlands Commission.

At the September 19, 2006 Board of Selectmen meeting, Selectman Wild suggested providing the Registrars of Voters the correspondence that stemmed from the appointment of Will Michael to the Inland Wetlands Commission. This correspondence serves to comply with his request.

Cc: Attorney Martin Lawlor
Lisa Bergh, Town Clerk
Will Michael

Law Offices of
WILLIAM J. HAGAN

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Danbury, CT 06810
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Connecticut and New York

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September 6, 2006

Board Of Selectmen
Town Of Bethel
One School Street
Bethel, CT 06801

Re: Appointment of Will Michael

Gentlemen:

The Board of Selectmen has referred to me the issue raised by Martin Lawlor Jr., Esq. pertaining to the appointment of Will Michael to the Inland Wetlands Commission, filling a previously vacated Republican seat on that commission. Distilled to its essence, the issue is as follows: is Mr. Michael, who changed his affiliation from the Libertarian party to the Republican Party fewer than three months prior to his appointment, precluded from serving on the Commission until the three month period set forth in Connecticut General Statutes §9-59 has expired? For the reasons set forth below, it is my opinion that he is not so precluded, and is free to serve on the Commission.

C.G.S. §9-59 provides in pertinent part: "Any elector whose name has been transferred from one enrollment list to another or who has applied for erasure or transfer of his name from an enrollment list shall not be entitled to vote in a caucus or primary of any party or be entitled to the privileges accompanying enrollment in any party for a period of three months from the date of the filing of his application for transfer or for erasure."

The statute does not provide that Mr. Michael's enrollment in the Libertarian party continues until the three-month period has elapsed. Therefore his change of party is effective immediately. What is forestalled for three months is his right to claim the "privileges accompanying enrollment" in the Republican Party.

Voting at the caucus or in a primary are among the "privileges accompanying enrollment" in the Republican Party which are explicitly set forth in the statute. Serving on the Inland Wetlands Commission having been the Republican nominee for

Board Of Selectmen
September 6, 2006
Page Two

appointment is not among the rights and privileges of being a member of that party. It is the prerogative of the Republican Town Committee and the Board Of Selectmen, respectively, to nominate and appoint Mr. Michael, or to decline to do so, but such nomination is not a right which Mr. Michael can demand merely by virtue of his party affiliation.

The history of amendments to C.G.S. §9-59 is illuminating. In 1985, Public Act 85-207 amended the statute's language to prohibit an elector who voluntarily canceled his rights from enrolling in a political party until six months after the cancellation. In 1987, Public Act 87-509 abandoned the prohibition on enrolling in a new political party, and replaced that language with a reference to a six-month period during which the elector was prohibited from voting in a caucus or primary. In 1994, Public Act 94-109 shortened the six-month period to three months. The 1987 amendment therefore removed the language which would have precluded Mr. Michael from claiming membership in the Republican Party until the expiration of the waiting period.

In contrast, C.G.S. §9-59 provides elsewhere that "[a]ny elector who removes his name from the registry list and from an enrollment list in accordance with the provisions of section 9-35b shall not be entitled to **enroll in any political party** or vote in any primary for three months after such removal." (emphasis added). Therefore, had Mr. Michael in fact sought to relinquish his rights as an elector pursuant to C.G.S. 9-35b, as opposed to seeking a transfer of party affiliation, he would in fact have been precluded from enrollment in a new party for the three month period.

Moreover, when the General Assembly intends that an appointment, as opposed to voting in a caucus or primary, requires enrollment in a political party **for a specified period of time**, it clearly articulates such requirement in the statute: by way of example, pursuant to C.G.S. §9-192, while both a deputy and any assistant registrar of voters, as a condition of eligibility for appointment, must be an elector in the town, the deputy registrar of voters must also have been enrolled in the same political party as the registrar for a period of not less than six months.

For the foregoing reasons, it is my opinion that Mr. Michael was properly seated on the Inland Wetlands Commission.

Very truly yours,



William J. Hagan

WJH:

Via Fax 794-8552

August 14, 2006
99 Greenwood Avenue
Bethel, CT 06801

Board of Selectmen
Town of Bethel
1 School Street
Clifford J. Hurgin Municipal Center
Bethel, CT 06801

Re: Appointment of William C. Michael to
Inland Wetlands Commission

Gentlemen,

Pursuant to § 9-59 of the Connecticut General Statutes, an elector that transfers from one political party to another "...shall not be entitled to vote in a caucus or primary of any party or be entitled to the privileges accompanying enrollment in a party for a period of three months from the date of the filing of his application for transfer or erasure." [Emphasis added.]

Under § C3-3. A. of Bethel's Charter, the Board of Selectmen are responsible to fill a vacancy of any elective town office. When the Board of Selectmen make an appointment to fill such a vacancy, Bethel's Charter § C3.-3 D. requires that it be "...filled by the appointment of a member of the same political party." [Emphasis added.]

At the Board of Selectmen's meeting of August 1, 2006, William C. Michael was recommended by the Republican Town Committee to fill the vacancy created by the resignation of Gregory M. Berk, a Republican alternate on the Inland Wetlands Commission. At the same meeting, the Board of Selectmen appointed William C. Michael to fill the unexpired term of Gregory M. Berk. (The filed minutes of the Board of Selectmen's meeting of August 1, 2006 indicate that a motion was made and seconded to appoint Mr. Michael but the minutes do not reflect that a vote was taken.) On August 8, 2006, Mr. Michael was administered the oath of office as an alternate for the Inland Wetlands Commission.

The appointment of Mr. Michael and his acceptance of the office as an alternate of the Inland Wetlands Commission violates both § 9-59 of the Connecticut General Statutes and § C3-3. D. of Bethel's Charter.

Mr. Michael was an enrolled member of the Libertarian Party until July 24, 2006 when he filed a Party Endorsement Change to the Republican Party. Since ninety days of the filing of his Party Endorsement Change have not elapsed, he is not a member of the Republican Party with the "...privileges accompanying enrollment...". Since Mr. Michael is not a recognized member of the Republican Party under state law, it follows that the Board of Selectmen were without authority under Bethel's Charter to appoint him as a Republican alternate to the Inland Wetlands Commission. In fact, the Board of Selectmen's filed minutes for the August 1, 2006

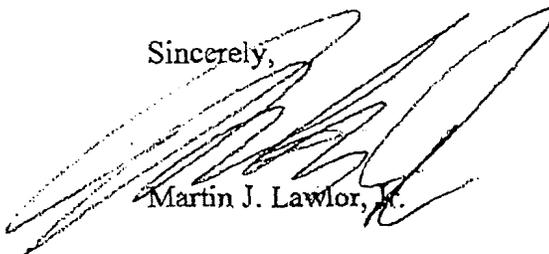
meeting indicate that Mr. Michael's party affiliation was as an "(L)" representing the Libertarian Party and not as an "(R)" which represents the Republican Party.

To comply with the terms of Bethel's Charter and the laws of the State of Connecticut, I respectfully request that the Board of Selectmen rescind its motion to appoint Mr. Michael to the Inland Wetlands Commission as an alternate and cause a valid registered Republican be seated for the position vacated by Gregory M. Berk.

I would further request that the Board of Selectmen file a copy of its approved motion in the Town of Bethel's Vacancy Resignation Volume located in the Town Clerk's office or in the alternative, to contact Mr. Michael to have him file an immediate resignation with the Town Clerk of Bethel to correct the Town records and prevent any future confusion or uncertainty by having him participate and/or vote as a member of the Inland Wetlands Commission.

My opinions and requests herein do not reflect one way or another on the qualifications or the abilities of Mr. Michael.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin J. Lawlor, Jr.", is written over the typed name. The signature is stylized and somewhat cursive.

Martin J. Lawlor, Jr.

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WILLIAM J. HAGAN

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September 19, 2006

Board Of Selectmen
Town Of Bethel
One School Street
Bethel, CT 06801

Re: Appointment of Will Michael

Gentlemen:

At the request of Selectman Wild, on Friday, September 8, 2006, I spoke with Theodore Bromley, Staff Attorney with the Legislation and Elections Administration Division of the Secretary of State's office regarding my opinion concerning Will Michael's party affiliation, and hence his eligibility for appointment to the Inland Wetlands Commission in August, 2006.

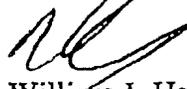
I advised attorney Bromley that Mr. Michael had applied to transfer his party affiliation from the Libertarian party to the Republican Party on or about July 24, 2006. I further advised Attorney Bromley that Mr. Michael's status as a member of the Republican Party was a requirement pursuant to the Bethel Charter for Mr. Michael's eligibility for appointment to the Inland Wetlands Commission at that time to fill a Republican seat. I further advised Attorney Bromley that Mr. Michael had not applied for erasure of his name from the enrollment list, but rather for transfer from the Libertarian Party to the Republican Party. I indicated that Mr. Michael did not intend to vote in any Republican primary or caucus during the three-month period. I further indicated that in my view his membership in the Republican Party for the purposes of our Charter commenced at the time of the application for transfer, and was not delayed as it would have been had Mr. Michael applied instead for erasure pursuant to C.G.S. §9-35b.

Attorney Bromley indicated that he agreed with my analysis. However, he said that he would prefer to review opinions issued by the Secretary of State's office concerning the issue before committing himself in that regard. He thereafter called me back and indicated that based upon his review, his opinion remained unchanged that Mr.

Board Of Selectmen
September 6, 2006
Page Two

Michael enjoyed the status of a member of the Republican Party as of the date of his appointment to the Inland Wetlands Commission. As indicated in my previous letter, the issue turns on the distinction between seeking crasure of one's name from the registry list, as opposed to a change of political parties. At no time did Mr. Michael seek to erase his name from the registry pursuant to C.G.S. §9-35b. He never indicated any interest in "relinquish[ing] his rights as an elector..." He therefore was not precluded from enrollment in a new party for a period of three months as he would have been pursuant to §9-59 had he sought crasure pursuant to §9-35b.

Very truly yours,



William J. Hagan

WJH: