

**Statement of State Municipal Ethics Task Force Member Stephen M. Hudspeth
for the March 23, 2009 Legislative Hearing, in Opposition to Raised Bill No. 6696**

Eight points are key to providing for high municipal ethics standards while at the same time not discouraging citizen volunteerism on which many municipalities heavily rely. Raised Bill No. 6696 (the "Bill"), while a great improvement over municipal ethics bills offered in previous sessions and voted down in committee or on the floor, is still badly deficient in critical areas in all but one (# 7) of these key points, as noted below. **All but the third and eighth of these key points were adopted unanimously in the Final Report of the Task Force on Municipal Ethics appointed by the Legislature (the "Report"), of which I am a member. I also chair Wilton's Council on Ethics. Here are the eight points, in which fellow Task Force member Linda Smith-Criddle concurs:**

1. Give municipalities a choice of having either local or regional codes and enforcement, with state intervention only in default of action by the municipality to implement such a code and enforcement mechanism within a specified period of time after the effective date of the legislation. **The Bill does so as to the code but is silent as to enforcement.**

2. Make the minimum substantive standards for a municipal ethics code straightforward, and express them in the legislation in language that can be readily understood, using the language proposed in the Report. The six minimum provisions contained in any such municipal code of ethics as unanimously recommended in the Report are these:

(A) Conflict of interest provisions that prohibit a public official or employee from participating in a matter in which he or she has a personal or financial interest;

(B) Disclosure and recusal provisions that require the written disclosure of conflicts of interest by public officials and employees and the recusal from participation in any decision-making concerning the matter at hand;

(C) Gift provisions that prohibit public officials and employees from soliciting or accepting anything of value that could reasonably be expected to influence the actions or judgment of such official or employee;

(D) Use of Property provisions that prohibit a public official or employee from using town property in any manner that benefits himself or herself to a degree that is greater than a member of the general public when such property is made available to the general public;

(E) Representation of Private Interests provisions that prohibit representing a private interest before the board or commission on which the public official serves. Such provision would extend to a period of six months after the official terminated his or her service on such board; and

(F) Use of Position provisions that prohibit the use of information acquired through a public official's or employee's position to further such official's or employee's own financial or personal interests.

A possible sample code containing the minimum suggested standards is found in Appendix 6 to the Report ("Appendix 6"). **The Bill does not present these six minimum requirements in the clear, simple, and easily understood terms the Report recommends, as laid out above.**

3. Limit the definition section to a short and very clear set of definitions (**not the four pages of definitions found in the Bill**). Simplicity and clarity are absolutely essential if voluntarism is to be encouraged. Consequently, I recommend the following definitions, coupled with the minimum substantive standards found in the preceding Point, as follows (taken from the definitions section, Section B-1, found on p. 3 of Appendix 6):

Board -- any board, committee, commission, council, authority, agency or other body of Town government;

Official -- any elected or appointed person serving on any Board, whether paid or unpaid and whether full or part-time;

Employee -- any person employed full or part-time by the Town or any Board, excluding any person who is a member of a union having a collective bargaining agreement with the Town or any of its Boards and who is covered by a Board's code of conduct or a Town departmental code of conduct that (1) contains provisions equivalent to, or stricter than, those contained in this Section B and (2) includes provision for the making of citizen complaints and for an adjudicative process for review and resolution of them;

Relative -- any person related to an Official or Employee by blood, adoption, or marriage;

Business -- any business organization or operation of which an Official or Employee, or a Relative, is an owner, director, officer, employee, compensated agent, or holder of five percent or more of the outstanding stock of any class;

Financial Interest -- any interest representing an actual or potential economic gain or loss, which is neither de minimis nor shared by the general public, that accrues to an Official or Employee, to a Relative, or to a Business;

Personal Interest -- any interest representing an actual or potential non-economic benefit or detriment, which is neither de minimis nor shared by the general public, that accrues to an Official or Employee, to a Relative, or to a Business.

By contrast, the four pages of definitions found in the Bill are not easy to follow and take great pains to define, for example, maximum allowable gifts where no such specific definitions are either required or desirable. It is a mistake to define gift dollar amounts especially for volunteers; instead it is best to leave an unlawful gift to be defined by, for example, a gift that could “reasonably be expected to influence the actions or judgment of [an] official or employee” as the Report recommends. Fixed dollar amounts have rigidity (especially at the proposal legislation’s ten dollar level aggregating \$50 in one year! – see Sec. 1(5)(N)) which is inappropriate in many cases and can cause unintentionally idiotic consequences in their application. That is why the Task Force resisted going that route in the Report. By the way, the mere fact that there is a Section 1(5)(N) in the Bill’s definitions section illustrates the impenetrably lengthy and dense qualities of that section.

4. Require that the municipal enforcement mechanism must include provision for the making of citizens’ complaints and a method for the adjudication of them and provide also for a procedure for the issuance of advisory opinions by that same enforcement body. **The Bill does not address this point at all**, even though the Report recommends it. The sample code found in Appendix 6 (at Sections D and E) contains such provisions.

5. Cover special entities like fire, water and sewer districts in some way under a code of ethics and an enforcement mechanism, either by an adjoining municipality or by the state. **The Bill does not address this point except as to special districts “contained” within a municipality, as defined in Section 1(10)**, even though the Report recommends it.

6. Do **not** provide for appeal to the Office of State Ethics of any decisions by local or regional ethics enforcement bodies both because such appeals will undermine those local ethics bodies and because they will discourage volunteerism by those who do not want to face the possibility of baseless claims dragging them through a remote appellate process. **The Bill is good in this respect in that it does not so provide.**

7. Do **not** provide for financial disclosures by volunteers beyond those which arise when a conflict issue is presented; the result of requiring such disclosures, as we heard in testimony before the Task Force from multiple witnesses, will be strongly to discourage volunteerism by those with nothing to hide ethically but who simply do not want their personal financial information on the public record and will stop volunteering if such disclosure is required. **The Bill is good in this respect in that it does not so provide.**

8. Make special provision for non-management, unionized employees covered by other codes of conduct, exempting them from coverage under the municipal code provided that those other codes of conduct are at least as strict as the municipality’s code and provide a mechanism for the filing of citizens’ complaints and the adjudication of them. Such a provision is found under the definition of “Employee” in Section B-1 of Appendix 6, as quoted in Point 3 above. **The Bill does not so provide, but it should in fairness do so.**

One who criticizes should offer a suitable alternative; so please consult the Attachment to this Statement which in two pages offers an alternative, in the form of a proposed amendment to the first five sections of the Bill, that satisfies these eight points.

Finally, as to general comments I am most concerned with the effect of the Bill on volunteerism in towns of the size of mine (Wilton has a population of around 18,000) and those towns both smaller and somewhat larger that rely very heavily on volunteers for the performance of many significant town functions. Without those volunteers on town boards (over 150 just on Wilton's town boards), towns will have to pay much more in employee expenses that they can't afford in the best of times and most certainly can't afford now. The Report offers a clear and helpful way forward with which I believe most municipalities can live, especially in its succinctly stated six minimum provisions as quoted in Point 2 above, with which all members of the Task Force were in agreement as they unanimously voted to approve that section of the Report -- with their only substantive change in the draft being the addition of the four words "reasonably be expected to" in item (C) concerning gifts, as reflected in Point 2.

As to some examples of specific concerns with the proposed legislation, the text even in the non-definitional operative sections is sufficiently impenetrable in my opinion to make it unclear whether, for example, in the conflicts section (Sec. 3(1) of the proposed legislation, found on p. 6) disclosure and recusal is sufficient in a conflicts situation or whether one has to give up his or her employment if there is or might be any conflict in any individual situation, or otherwise not serve. This turns the concept of recusal on its head. These kinds of ambiguously drafted provisions in my opinion will seriously discourage volunteerism in town government for towns of around Wilton's size and smaller, and probably for larger ones as well that also rely heavily on volunteerism. Conversely, Sec. 3(4)(A) and (B) on p. 7 strangely seems to relieve volunteers of responsibility for obvious conflicts that should not be tolerated even for volunteers.

It may be that very large municipalities having a much higher proportion of paid employees to volunteers can live with some of these elements of the Bill, and that is why I encouraged the Task Force to consider a cut-off at 35,000 population for municipalities as to which a state legislated municipal ethics standards of the sort found in the Bill would apply and to use a different standard for municipalities of smaller size, to facilitate volunteerism. The Task Force did not adopt that splitting suggestion, and if a split in legislative application is not possible, then the standards that encourage volunteerism are so important that they need to be universally applied, as recommended in the Report.

Our State has a golden moment here finally to pass good municipal ethics legislation, but the Bill, while better than past bills, just won't do it, and that is a great shame. What is required here is clarity and simplicity, and the Bill sadly lacks both. I strongly urge that the form of legislation recommended in the Report be followed so that our State can at last get something on which all can agree: useful and much needed legislative action in the area of minimum standards for municipal ethics regulation.

Dated: March 19, 2009

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**Attachment to Statement of Stephen M. Hudspeth –
Proposal for Amendment to Raised Bill No. 6696**

AN ACT CONCERNING MUNICIPAL ETHICS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

[DELETE EXISTING SECTIONS 1 through 5 and INSERT THE FOLLOWING:]

Section 1. (NEW) (*Effective October 1, 2009*) No later than one year after the effective date of this act, every municipality within the State shall have adopted a code of ethics that shall contain the minimum provisions set out in subsections (A) through (F) of this section but may also contain other provisions not inconsistent with those provisions:

- (A) Conflict of interest provisions that prohibit a public official or employee from participating in a matter in which he or she has a personal or financial interest;
- (B) Disclosure and recusal provisions that require the written disclosure of conflicts of interest by public officials and employees and the recusal from participation in any decision-making concerning the matter at hand;
- (C) Gift provisions that prohibit public officials and employees from soliciting or accepting anything of value that could reasonably be expected to influence the actions or judgment of such official or employee;
- (D) Use of Property provisions that prohibit a public official or employee from using town property in any manner that benefits himself or herself to a degree that is greater than a member of the general public when such property is made available to the general public;
- (E) Representation of Private Interests provisions that prohibit representing a private interest before the board or commission on which the public official serves. Such provision must extend to a period of not less than six months after the official terminates his or her service on such board; and
- (F) Use of Position provisions that prohibit the use of information acquired through a public official's or employee's position to further such official's or employee's own financial or personal interests.

Section 2. (NEW) (*Effective October 1, 2009*) The terms used in section 1 of this act shall have the following definitions:

- (A) **Municipality** -- any town, city borough, consolidated town and city, consolidated town and borough, and includes any special district contained therein.
- (B) **Board** -- any board, committee, commission, council, authority, agency or other body of the municipality;
- (C) **Official** -- any elected or appointed person serving on any Board, whether paid or unpaid and whether full or part-time;

(D) Employee -- any person employed full or part-time by a Municipality or any Board, excluding any person who is a member of a union having a collective bargaining agreement with the Municipality or any of its Boards and who is covered by a Board's code of conduct or a Municipal departmental code of conduct that (1) contains provisions equivalent to, or stricter than, those contained in this Section and (2) includes provision for the making of citizen complaints and for an adjudicative process for review and resolution of them;

(E) Relative -- any person related to an Official or Employee by blood, adoption, or marriage;

(F) Business -- any business organization or operation of which an Official or Employee, or a Relative, is an owner, director, officer, employee, compensated agent, or holder of five percent or more of the outstanding stock of any class;

(G) Financial Interest -- any interest representing an actual or potential economic gain or loss, which is neither de minimis nor shared by the general public, that accrues to an Official or Employee, to a Relative, or to a Business;

(H) Personal Interest -- any interest representing an actual or potential non-economic benefit or detriment, which is neither de minimis nor shared by the general public, that accrues to an Official or Employee, to a Relative, or to a Business.

Section 3. (NEW) (*Effective October 1, 2009*) No later than one year after the effective date of this act, every municipality within the State shall have established an enforcement mechanism for its code of ethics on either an individual municipal or a regional basis that provides for the making of citizens' complaints and a method for the adjudication of them and provides also for a procedure for the issuance of written advisory opinions by that same enforcement body, allowing officials and employees to seek written advisory opinions as to their own circumstances.

Section 4. (NEW) (*Effective October 1, 2009*) Any municipality that shall have either failed to adopt a code of ethics or to have put in place an enforcement mechanism that meets the requirements of sections 1 and 3 of this act within one year of the effective date of this act shall be subject thereupon to ethics regulation by the Office of State Ethics until such time as it shall have adopted a code of ethics complying with Section 1 of this act and put in place an enforcement mechanism complying with Section 3 of this act.

Section 5. (NEW) (*Effective October 1, 2009*) A sample of a code which complies with this act and which is offered as nothing more than a sample that may be modified or replaced in whatever way a municipality wishes so long as the municipality's code of ethics complies with section 1 of this act and an enforcement mechanism is put in place that complies with section 3 of this act. **[ANNEX OR REFERENCE APPENDIX 6 TO THE TASK FORCE REPORT AS THE SAMPLE CODE REFERENCED IN THIS SECTION.]**

[RETAIN SECTION 6, AMENDING ONLY LINE 280 WITHIN SUBSECTION (a) TO DELETE THE WORDS "of section 2". RETAIN REMAINING SECTIONS (7 AND 8) AS IS NECESSARY TO ACCOMPLISH THE PURPOSES OF THIS ACT.]