

City of Bainbridge Island Ethics Board

Case Number 2019-05

Date Filed: 24 February 2019

Complainant: Lisa Schulze

Respondent: Councilman Ron Peltier

Response Filed: 3 April 2019

Advisory Opinion Issued: 15 April 2019

This complaint was filed on 24 February 2019 by the wife of the former City Manager of Bainbridge Island. The documents accompanying the complaint detail numerous instances of questionable behavior, ranging from minor to serious breaches of ethics. They include likely violations of both Article I and Article II of the Code of Ethics. In researching this complaint, the Ethics Board also took note of materials submitted to members of the Ethics Board and the City Council by Bainbridge Island Citizens for Ethical Government as a “complaint against COBI actions.”

Background:

Doug Schulze served as the City Manager for Bainbridge Island from 2012 until his departure through his resignation on October 2, 2018. The City Manager is responsible to the elected members of the City Council, and during the time of Schulze’s tenure, Ron Peltier was elected and served as a member of the City Council. On July 16, 2018, Schulze informed the City Council that he was offered a position by the City of Banning, California to serve as City Manager. On August 3, 2018, Schulze submitted a formal letter of resignation to take effect on October 2, 2018. Subsequently, on August 8, Schulze was interviewed by the Kitsap Sun about his tenure on Bainbridge Island, and cited his frustrations with working with some members of City Council. In particular, Schulze cited conflicts with Councilmember Peltier as adding to his reasons for leaving. From that point through February 2019, Peltier has engaged in activities that appear to violate the City of Bainbridge Island Code of Ethics. Councilmember Peltier submitted responses to the complaint and these were reviewed by the Ethics Board. The Ethics Board has not requested nor received subsequent documentation that may be related to this complaint.

Process and review:

In working through the myriad documents associated with the complaint, the following actions were of concern to the Ethics Board. After listing here, each will be discussed in greater detail and related to our Code of Ethics.

1. Violation of core values of the Bainbridge Island Code of Ethics, specifically integrity, mutual respect, obligations to others and fairness
2. Initiating contact with a councilmember in Banning to engage in discrediting Schulze

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3. Harassment of a former employee by Councilmember Peltier vis-à-vis following Schulze to a new position in another city
4. Possible collusion with a Banning City Councilmember to create a hostile work environment for a Banning city employee
5. An extended campaign, on-going since July 2018, to discredit Schulze
6. The use of city resources to conduct a campaign against the former City Manager Schulze
7. Confidentiality violations in documents offered to Banning Councilmember and in the process used to file complaints with the International City Manager's Association (ICMA)
8. Possible conflict of interest through actions taken in an official capacity to pursue a matter of private interest

Findings:

Article I B Violations

Integrity is the second item in the core values of the Bainbridge Island Code of Ethics. The third section deals with equality, fairness and mutual respect. Without attempting to “classify” any particular behavior or action as falling under any specific term listed above, the Ethics Board finds that the following actions violate some or all of the core values.

The first departure from what is considered ethical behavior was the phone call by Peltier to a City Council member in Banning. This occurred following a phone conversation made by a member of the media in Banning to Peltier. Inasmuch as the media conversation was based on the Kitsap Sun interview with Doug Schulze when he announced his decision to leave Bainbridge Island, and addressed some matters before the Banning City Council, Peltier knew there were possible issues in Banning. While he did not initiate the phone call from the press, there was no professional reason for Peltier subsequently to make a phone call to the City Councilmember in Banning. And the continuing exchange of emails, once the tenor was discerned, was clearly out of line.

Peltier professes to have been blindsided by Schulze's interest in securing the Bainbridge Island Police Chief for a similar position in Banning: “a bit of a bombshell, unexpected and difficult to grasp” [R p 1]. Given that the City Manager has the responsibility to hire and develop his/her own staff, this sort of action is not unexpected, even though it may not be appreciated. The dismissal by the ICMA of Peltier's complaint about this matter indicates that this is not a violation of the ICMA Code of Ethics and is part of the business of running a municipality. Continued attempted involvement in the affairs of another city for the purposes of satisfying a personal interest is unprofessional behavior. Councilmember Peltier's conduct did not meet the standards established in Bainbridge Island's Code of Ethics.

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While Peltier claims that his intent has not been to cause “harm and embarrassment” to the Schulzes [R p.4], his ongoing email exchanges with the Councilmember in Banning contradict that statement. The casual bantering between the two, using Peltier’s city email account, does not portray respect or fairness toward his former employee, Schulze. Regardless of the circumstances that existed between the employer and the employee, one does not follow a former employee to a new employment situation and engage in harassment in conjunction with another public servant.

Working with the Council Member in Banning has put Peltier in the position of colluding with another elected official to create a hostile work environment for Schulze. An example of this is the fact that Peltier emailed to the Banning Council Member Peltier’s personal 2016 evaluation of Schulze as City Manager. This document was discussed in Executive Session of the City Council and the results, along with the evaluations of the other six members of the Council, were summarized by staff. That summary was then further discussed in Executive Session, before it was presented to the City Manager in a public session. The personal evaluation of Schulze by Councilmember Peltier, used out of the context of the entire review process by the full City Council, demonstrates Peltier’s pursuit of discrediting Schulze. Sending such information to Banning is further evidence of a campaign of harassment.

Article I C Violations

In the Ethics Code, Article I C 2 details “Obligations to Others.” The Ethics Board finds the following actions to be a violation of Article I C 2.

Given that the communication between the Banning City Councilmember and Peltier have become matters of public discourse on social media, not unexpected in these times, the behavior and communication violate the standards of civility and respect required of our elected officials. Whether or not this has entered the public awareness, the fact of the matter is that this behavior is unacceptable, and the public airing of it only exacerbates the impacts on the City of Bainbridge Island. Specifically, here are three ways in which Councilmember Peltier’s actions damage our community.

- 1) The impact of such exchanges to the person about whom the comments are being made amounts to bullying, pure and simple. A former employee has an expectation of fairness in dealing with members of his/her former employer. To be followed to a new community and a new position by a former employer is appalling. This is a clear violation of the Bainbridge Island Code of Ethics.
- 2) From the standpoint of the future of the City, this sort of activity will be widely noted. Bainbridge Island will be seeking a new City Manager in the near future, and it will not be an easy task given the treatment, post-departure, of this City Manager (Schulze). This could prove to be quite detrimental to Bainbridge Island when developing a pool of candidates for this position.

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- 3) For the average citizen observing these activities, it raises the question as to whether one can safely engage in discussion before City Council, for fear that there could be a reprisal if someone took issue with a statement made or an opinion expressed. In point of fact, the submission of a "Complaint Against COBI" submitted on 12 March 2019 regarding Peltier's involvement with Banning matters is exemplary of the concern engendered by Councilmember Peltier's behavior. The complaint recognizes the involvement of one City Council member and chastises the entire City Council for allowing this abuse to continue. The described behavior is clearly NOT a way to engender trust in the elected official of Bainbridge by its citizens.

Advisory Opinion:

In the simplest terms possible, the Ethics Board's opinion is: **stop this harassing behavior**. The numerous emails and activities which have been a part of the campaign to discredit the former Bainbridge Island employee constitutes unethical behavior.

Findings regarding Article II Violations

Article II. D. 1. Applications of Conflict of Interest states:

“. . . an elected official or member of a City Committee or Commission shall not directly, or indirectly through a subordinate or fellow officer, official or employee, take any direct official action on a matter on behalf of the City if he or she . . .

b. Has other financial or private interest in that matter"

Councilmember Peltier was referred to in an August 8, 2018 Kitsap Sun article as a "bully" by Mr. Schulze. At that point, Mr. Peltier began taking direct official action on a matter of private interest. Two weeks later (August 27, 2018), Councilmember Peltier filed a complaint with ICMA, not as a private citizen, but as a member of the Bainbridge Island City Council. The ICMA dismissed his complaint on December 28, 2018.

In November, Councilmember Peltier began communications, taking direct official action as a member of City Council, to discredit and harass Mr. Schulze on a matter of private interest to Councilmember Peltier. On January 11, 2019, Councilmember Peltier filed a second complaint with the ICMA, again taking direct official action as a member of City Council on a matter of private interest. He and a member of Banning City Council colluded in creating this complaint by sharing confidential information, contrary to the requirements of the ICMA. The ICMA dismissed this complaint as being without merit.

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The Ethics Board finds no evidence that the Bainbridge Island City Council directed Councilmember Peltier to file ethics complaints with the ICMA or to communicate with another city's council member to discredit their city manager.

Determination:

Either Councilmember Peltier was acting in an official capacity in his actions, exposing the City of Bainbridge and its entire City Council to risk of litigation by either/both Mr. Schulze and the City of Banning or Councilmember Peltier took direct official action on a matter of private interest. The Ethics Board finds no evidence that Councilmember Peltier's actions were agreed to or authorized by the Bainbridge Island City Council. The Ethics Board finds that Councilmember Peltier used his "official" position to pursue a private interest. Therefore, the Ethics Board **finds it likely a conflict of interest has occurred.**

Article II. C. Confidentiality states:

Except as required by law, an elected official, former elected official, or current or former member of a City Committee or Commission shall not disclose or use privileged, confidential or propriety information obtained in executive session or otherwise in the course of their duties as a result of their position.

On December 1, 2019, Councilmember Peltier, on his own initiative, shared his personal evaluation of Mr. Schulze's performance with a member of Banning City Council. Performance evaluations are conducted in executive session; information in executive session is confidential. Mr. Schulze's performance review ultimately became public record but only after input from all City Council members and a consolidation process conducted by the City HR Manager. Performance evaluations are not subject to disclosure "which do not discuss specific instances of misconduct" (Open Public Records Act RCW 42.30.110(g)). By excerpting one piece of an executive session process, Councilmember Peltier provided a biased and distorted view of Mr. Schulze's performance and likely violated Washington State confidentiality rules by sharing a performance evaluation component offered in executive session.

In addition, the Open Records Act specifically notes that "Councilmembers do not have the right to randomly access local government personnel files. Access should be limited to only those personnel records which they need in order to perform their official functions. Public officials have no special right to access employee personnel records if the access is not necessary for the performance of their public duties." (MRSC Public Records Act, page 42)

Councilmember Peltier notes in his Response [R p. 4] "I have not provided personal information about the Schulzes to anyone in Banning or elsewhere, including anyone who has posted on social media pages." Yet, through dozens of emails beginning as early as August 10, 2018 and continuing through February 24, 2019, Councilmember Peltier provides personal information about the Schulzes to Bainbridge Island citizens, to former Bainbridge City Council members,

and to a City of Banning Councilmember. In his emails, Councilmember Peltier forwards Facebook and YouTube links, as well as links to Banning's scandal paper, The Tattler. While Councilmember Peltier may not have created the content of these disparaging social media pages, he certainly promulgated the attacks on Mr. Schulze by his distribution of them.

On August 27, 2018, Councilmember Peltier submitted an ethics complaint to the International City Manager's Association (ICMA) related to Mr. Schulze. ICMA specifically notes that any ethics review is a ". . . confidential review process."¹ Councilmember Peltier acknowledges that he shared this information publicly at a City Council meeting and notes "I should have refrained from expressing my intention to file a complaint." Clearly Councilmember Peltier violated another entity's confidentiality code. His *mea culpa* does not mitigate his action.

Councilmember Peltier contradicts himself in his response, noting [R p. 6] "The two ICMA complaints I filed against Doug . . . are not confidential." It appears that Councilmember Peltier disregards confidentiality rules not just in Washington State but those demanded by the professional organization to which he appealed his concerns about the City Manager.

Determination:

The Ethics Board finds that a **breach of confidentiality has likely occurred.**

Article II. B. Use of City Property by Elected Officials states:

Except for limited incidental personal use or emergency circumstances, no elected official shall request, permit, or use City vehicles, equipment, materials, or property for personal use, personal convenience or profit.

Councilmember Peltier used City email to pursue an on-going, apparently personal, campaign to discredit Doug Schulze in his position as City Manager of Banning. This use of a Bainbridge Island city resource was not at the request of, or with the approval of, City Council. Between July 2018 and February 2019, more than 45 emails were exchanged between Councilmember Peltier and various citizens and/or elected officials of both Bainbridge Island and Banning, all related to discrediting Mr. Schulze.

Determination:

The citizens of Bainbridge Island pay taxes to fund City resources. And while not specifically listed among vehicles, materials and property, City email is a resource paid for by citizens. After reviewing the numerous instances of Councilmember Peltier's use of City email, the Ethics Board considers these emails as more significant than "limited, incidental or emergency

¹ See Enforcing the ICMA Code of Ethics <https://icma.org/enforcing-icma-code-ethics>

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circumstances.” The Ethics Board finds that these emails are not “official” City communications given their subject, content and tone. Therefore, the Ethics Board finds that a **likely violation of use of City property has occurred.**

Conclusions:

The Ethics Board incorporated here Article I Advisory Opinions and Article II Determinations into one document as both stem from the same set of activities and behaviors on the part of Councilmember Peltier. The Ethics Board intends that the material provided in the Article I discussion and Advisory Opinions serve as instructive examples of what constitutes a violation of the City’s Core Values. The Ethics Board also hopes that Councilmember Peltier will reflect seriously and thoughtfully on how he might better demonstrate the City’s Core Values. The degree to which his behavior continues to be troubling to this community will be determined, ultimately, by the voice of the people through the election process.

The Determinations of the likely violation of use of City property, the likely violation of conflict of interest, and the likely violation of the rules of confidentiality rise to the level of possible intervention by the City Council. The Ethics Board also hopes that the City Council, after review and discussion, will consider its options for action as set out in Article IV C 2 of the Code of Ethics.