

Ethics Review Board Meeting Minutes

March 26, 2015

4:30 p.m.

Members in Attendance: Board members Karen Weitkunat, Gino Campana, and Ross Cunniff (alternate).

Also present: Gerry Horak, Michael Pruznick, Kevin Duggan

Staff in Attendance: Carrie Daggett, City Attorney; Cary Carricato Alton, Paralegal.

A meeting of the City Council Ethics Review Board ("Board") was held on Thursday, March 26, 2015, in the City Attorney's Office Large Conference Room, to consider the following issue:

A Complaint submitted by citizen, Michael Pruznick, under Section 2-569 (d)(1)(a) of the City Code concerning Councilmember Horak as it relates to an allegation that Councilmember Horak violated provisions of state law or the Charter or Code pertaining to ethical conduct. Specifically, Mr. Pruznick alleges a violation of the Colorado Fair Campaign Practices Act. Mr. Pruznick's complaint and materials are attached hereto as Exhibit "A".

The meeting began at 4:38 p.m. The Board reviewed the Agenda which contained the following items:

1. Appointment of Chair for Meeting of the Ethics Review Board for the March 26, 2015, Meeting.
2. A Complaint before the Ethics Review Board ("Board") as submitted by Michael Pruznick, a citizen, alleging the Councilmember Gerry Horak violated the Fair Campaign Practices Act through statements made at the City Council meeting. The City Code calls for the Board to first determine if the complaint merits formal investigation.
3. Other Business.
4. Adjournment.

The Board discussed appointment of a chairperson for the meeting. Councilmember Cunniff nominated the Mayor to chair the meeting. Councilmember Campana seconded the nomination and the Mayor accepted the role of chairperson with the unanimous consent of the Board. The Mayor summarized the specifics alleged by Mr. Pruznick and indicated this meeting would be conducted under the procedure adopted on November 18, 2014. She indicated that if the Board believes that the allegations, if true, would constitute a violation of state or local ethics rules, the Board will determine whether an investigation of the matter should proceed. The Mayor indicated that she would like Mr. Pruznick to address his complaint and then would give Mr. Horak time to respond.

Mr. Pruznick indicated that he had little additional information to add to what he had previously submitted to the City Clerk. Mr. Pruznick summarized that his understanding of the Fair Campaign Practices Acts was that no person could use city resources for campaigning. Mr.

Pruznick explained that during the March 17, 2015, City Council meeting, he believes that Mr. Horak used city resources by speaking to some of the comments made by citizens and asserted that Mr. Horak spoke in a negative fashion at the City Council Meeting, using city resources to campaign. Mr. Pruznick stated that when Mr. Horak made the statement that his "other job" was "going door-to-door" this was an obvious campaign statement, and an attempt to solicit votes from people. Mr. Pruznick said that his minor complaint was that Mr. Horak had campaigned at an event of a 501(c)(3) organization.

The Mayor then asked Mr. Horak to respond to Mr. Pruznick's allegations.

Mr. Horak indicated that during his commentary on March 17, 2015, he stated two facts, and that he did not make any disparaging comments. He said that he made no reference to a campaign during his commentary, but was referring to an activity which was a fact. Mr. Horak explained that the meeting he attended was a private meeting, and that he was answering questions at that event, to which he had been invited to by a constituent.

Mr. Cunniff asked for clarification from Mr. Pruznick as to what provisions of the Fair Campaign Practices Act he believed were violated, so as to clarify what his complaint relates to. Mr. Pruznick answered that he had gathered the information submitted in his complaint from the City's website. Mr. Cunniff asked for clarification on Mr. Pruznick's filing under the ethics provision of the City Municipal Code and Charter, as well as clarification from Mr. Pruznick to how he ties the Municipal Code and Charter ethics provisions to the Fair Campaign Practices Act. Mr. Cunniff indicated that his understanding of the Fair Campaign Practices Act is that it is the domain of the Colorado Secretary of State.

Mr. Pruznick explained that his understanding of the purpose of the Ethics Review Board was to discuss potentially illegal activities, real or hypothetical. He stated that the Ethics Review Board seemed like the place to bring his complaint.

Mr. Cunniff asked Mr. Pruznick's opinion as to how Section 1-45-117(b)(II), which states that "Nothing in this subsection (1) shall be construed to prevent an elected official from expressing a personal opinion on any issue," fits into Mr. Pruznick's complaint. Mr. Pruznick responded that he interprets that section to only pertain to a ballot issue as opposed to a candidate.

The Mayor indicated that it is the job of the Ethics Review Board at this stage to determine whether the complaint alleges a violation by Mr. Horak of ethical rules of conduct and whether or not the Ethics Review Board feels that an investigation is warranted under the circumstances. The Mayor indicated that she does not believe that Mr. Pruznick's complaint falls within the Ethics Review Board's authority. Based on this opinion, the Mayor indicated that she did not believe that it is a complaint that the Ethics Review Board should consider.

Mr. Cunniff indicated that he was thinking something similar to the Mayor. He noted Colorado Revised Statutes Section 1-45-117(3) which states:

(3) If any candidate who is also an incumbent inadvertently or unavoidably makes any expenditure which involves campaign expenses and official expenses, such expenditures shall be deemed a campaign expense only, unless the candidate, not more than ten working days after the such expenditure, files with the appropriate officer such information as the secretary of state may by rule require in order to differentiate between campaign expenses and official expenses. Such information shall be set forth on a form provided by the appropriate officer. In the event that public moneys have been expended for campaign expenses and for official expenses, the candidate shall reimburse the state or political subdivision for the amount of money spent on campaign expenses.

Councilmember Cunniff indicated that it was his opinion that if Mr. Horak believed he had inadvertently spent City resources in making his statements on March 17, 2015, he still was within the timeframe to report this to the Secretary of State. Mr. Cunniff stated that the Ethics Review Board should find that there is insufficient evidence that Councilmember Horak committed an ethical violation of either the Code or Charter of the City of Fort Collins, and that Mr. Pruznick's complaint would be properly filed with the Colorado Secretary of State. On the basis of these findings, Mr. Cunniff moved that the Board determine that no further action is warranted.

Councilmember Campana seconded the Motion. He noted that he agreed with much of what Councilmember Cunniff previously stated. He explained that the Ethics Review Board assembles under Article IV, Section 9 of the Charter for the City as it relates to conflicts of interest, disclosure of confidential information, representation of other persons before the City Council or any board or commission of the City, acceptance of money for speeches, debates or other public events, accepting any gift or favor, or requesting special treatment from the City. Mr. Campana stated this is just not a complaint that falls within the Ethics Review Board's purview.

The Board voted unanimously to adopt Councilmember Cunniff's Motion.

City Attorney Daggett indicated that she would write up the minutes from this discussion, and would prepare a Public Notice concerning the determination by the Ethics Review Board to be distributed to Board Members and all parties involved, as well as the public.


The Mayor inquired about whether there was other business. There was no other business to be brought before the Ethics Review Board.

Mr. Pruznick asked some follow up questions about the Ethics Review Board process, which were addressed by the Mayor. Mr. Cunniff indicated that the notice of the determination would go to the entire Council, and they could take action if they felt it was warranted. Mr. Pruznick also asked where the minutes and documents of the Ethics Review Board could be found in the

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public record. Attorney Daggett explained that the City Attorney's Office is working with the City's Information Services staff to re-structure the Ethics Review Board page on the City's website so the notices, agendas, and minutes would be more readily accessible.

Meeting adjourned at 4:57 p.m.



Carrie M. Daggett, City Attorney

EXHIBIT

A

Cary Alton

From: Wanda Nelson
Sent: Thursday, March 19, 2015 3:33 PM
To: City Council
Cc: Darin Atteberry; Jeff Mihelich; Carrie Daggett; Rita Knoll
Subject: FW: Ethical Complaint Against Gerry Horak from 2015-03-17 council meeting

Ethics Review Board:

Pursuant to Section 2.569(d)(1) (included below), I am informing you of a complaint filed against Mayor Pro Tem Gerry Horak. The provision states that the complaint must be considered by the Board within ten working days. Carrie Daggett will provide details regarding the next steps.

Complaints and inquiries shall be submitted to the Review Board only according to the following procedures:

(1)

Complaints.

a.

Any person who believes that a Councilmember or board and commission member has violated any provision of state law or the Charter or Code pertaining to ethical conduct may file a complaint with the City Clerk, who shall immediately notify the chairperson of the Review Board, the Councilmembers or board and commission members named in the complaint and the City Council. The complaint shall be promptly scheduled for consideration by the Review Board. No more than ten (10) working days after the date of filing of the complaint, the Review Board shall meet and consider the complaint. All Councilmembers or board and commission members named in the complaint, as well as the complainant, shall be given written notice of such meeting at least three (3) working days prior to the meeting. A notice of the complaint, including the identity of the complainant shall be posted along with the meeting notice.



Wanda Nelson, City Clerk
City of Fort Collins
P.O. Box 580
Fort Collins, CO 80522
wnelson@fcgov.com
970.416.2995

-----Original Message-----

From: mikepruz@gmail.com [mailto:mikepruz@gmail.com]
Sent: Thursday, March 19, 2015 2:44 PM
To: Wanda Nelson
Subject: Ethical Complaint Against Gerry Horak from 2015-03-17 council meeting

City Clerk,

Per Sec. 2-569. - Board of ethics. (d)(1)(a) "Any person who believes that a Councilmember or board and commission member has violated any provision of state law or the Charter or Code pertaining to ethical conduct may file a complaint with the City Clerk"

Complaint is attached as follows:

2015-03-17.gerry-horak.cfcpa-ethics.txt -- The text of the complaint.

2015-03-17.gerry-horak.cfcpa-ethics.jpg -- Screen shot of the facial expression referenced in the complaint.

I'm not familiar with the new process, please let me know my role and responsibilities are.

Thank you, Michael Pruznick, D3 Citizen

2015-03-17.gerry-horak.cfcpa-ethics.txt

The Colorado Fair Campaign Practices Act prohibits local governments and their officials from using City money or resources to support a candidate's campaign.

At the 2015-03-17 council meeting Gerry Horak appears to violate this on two occasions:

1H:28M:30S to 1H:28M:45S

Gerry Horak said, "since this was really a political thing tonight I think it is important for folks to know that the two accusations against me were made by my opponent and his campaign manger." His demeaning facial expressions (attached) should also be taken into account.

The Mayor is on the record saying the public cannot campaign during public comments. The only reference I can specifically find is a few years back from the 2012-04-18 Economic Board meeting minutes. "Mayor weitkumat commented that political campaigning at Boards and Commissions meetings was not appropriate."

The candidates did their job by not campaigning and only bringing up facts from their viewpoint. Gerry made assumptions about their motives and used his public position to unfairly demean his competition.

Gerry should have had his campaign manger in the room. His campaign manager could have used public comment to point out the political aspect. Gerry didn't have to bring up the political aspect in his official position, in view of the public, under color of authority of the Mayor Pro Tem. His comments with the City Attorney clearly explained his viewpoint. Bringing up the political aspect only served his political campaign and added nothing to the discussion of the issue.

This is a clear violation of the law.

4H:41M:25S to 4H:41M:45S

Gerry Horak said, "I only say this because my other occupation these days is walking door to door. So I've literally walked through the Avery Park neighborhood and most of the other neighborhoods that, uh, I mean I only have part of this. But the neighborhoods that in this plan, that are district six, I've walked nearly every door and I can tell you what they look like and we need to do something about this."

Gerry could have simply said that he's lived in the area for years, has visited most neighborhoods during various time of the years, knows what they look like, knows something needs to be done, and that this west central Plan is a good thing to do based on his extensive familiarity with the area. Same, if not stronger message, without using his position of authority to campaign.

This is clearly a political message attempting to let the people of these areas know how he is campaigning for them to encourage their vote.

This is a clear violation of the law.

1H:10M:05S to 1H:10M:25S

Michael Pruznick said, "Gerry and Wade I'm going to pick on you tonight because you are the only two council members seeking re-election claiming you've done a great job serving this community. I would like to know how allowing rapes to happen and allowing rapists to roam free in our community is a great thing that deserves your re-election."

2015-03-17.gerry-horak.cfcpa-ethics.txt

My statement was clearly political, but not campaigning, and yet neither Gerry nor Wade responded.

This clearly shows that Gerry was using his position to protect his campaign and not serve the people.

Why else would Gerry only go after his opponent and not candidates in other races?

4H:22M:55S to 4H:23M:15S

Michael Pruznick said, "I would like to conclude by simply reminding you that we serve at your pleasure and at the election we will fix the last vote and before that RECALL GINO. Anyone who would like to help me do that, my number is in the public record."

No council member mentioned the political nor campaigning nature of this message. Why was Gerry only concerned about his opponent, and not the general issue of campaigning politics during public comment?

Clearly, Gerry's actions were focused on promoting his campaign while discrediting his competition. Neither Gerry nor the council as a whole was worried about any other political motivation, campaign, or election race. Gerry violated The Colorado Fair Campaign Practices Act acting in conflict of interest between his duty to serve now and his desire to get re-elected at any cost.

ALSO: Please note that at the SOSH meeting on Monday, March 2nd, Gerry Horak, who was invited as D6 representative, also injected political campaigning into that meeting. Specifically targeting me. I disengaged by saying "this is not about that," apologized, withdrew my question, and put my head down. Gerry kept trying to engage me, but I held my ground. Gerry should know better than to inject candidacies into 501(c)3 meetings. Everyone else knew and obeyed the rules. I've been a member SOSH since early 2013. I was there in that capacity.

Michael Pruznick, D3 Citizen

01:28:43 / 04:54:29



Citizen Participation Follow-Up

Fort Collins City Council Meeting

March 17, 2016

