

**TOWN OF EAST HARTFORD PERSONNEL APPEALS BOARD
SPECIAL MEETING MINUTES**

Monday, November 29th, 2021
Virtual Meeting via Microsoft Teams

Present:

Personnel Appeals Board Members

Shaun Jones, Chair
Godfred T. Ansah
Richard Bates

Appellant

Ofc. Jason Guerrero

Other

Stephen McEleney, Esq.
Michael Daniels, Clerk

CALL TO ORDER

Chair Shaun Jones called the meeting to order at 5:51 PM. Mr. Daniels called the roll.

Mr. Bates said he no longer had a need to amend the minutes of November 8, 2021, after reviewing the recording of the meeting.

Chair Jones said he listened to the recording of the August 2, 2021, meeting and interprets the Board's affirmation of the appeal of Ofc. Guerrero to indicate that once Ofc. Guerrero was added to the eligibility list, a discussion relating to seniority would follow.

Mr. Bates asked for the minutes to indicate that the minutes of all Personnel Appeals Board meetings summarize and paraphrase the comments made at the meetings by the members and that their exact statements may be found in the recordings.

Mr. Bates moved to approve the minutes of November 8, 2021.

Mr. Ansah seconded. All voted in favor, none voted opposed.

Mr. Bates moved to approve the minutes of November 18, 2021.

Mr. Ansah seconded. All voted in favor, none voted opposed.

Chair Jones summarized the memo from Assistant Corporation Counsel Rich Gentile, indicating that the Corporation Counsel is unable to provide responses to questions that do not constitute official opinions, but the Board could request official opinions if desired. Chair Jones suggested the Board resubmit their questions asking for official opinions. Mr. Bates said he believes the first seven questions the Board asked would fall under the purview of the Corporation Counsel as

defined in the Town Charter because they ask about the Board's powers and duties. Mr. Bates suggested asking for official opinions for the first seven questions that the Board had asked at the previous meeting.

Chair Jones suggested adding a question about if Ofc. Guerrero has the opportunity to appeal and if so, which version of the Personnel Rules would apply for that appeal.

Mr. Bates read from the Town Charter to indicate that when the Corporation Counsel provides an official opinion to a board or commission, he or she must indicate if the opinion follows with substantial legal certainty or if it simply represents his or her best judgement with a degree of uncertainty. He noted that if the opinion is said to follow with substantial certainty, this opinion is binding on the board or commission. He indicated that such an opinion might restrict the Board's ability to proceed with the current appeals.

Atty. McEleney asked why an opinion from Corporation Counsel is necessary due to Chair Jones's interpretation of the Board's actions at the August 2, 2021, meeting that the addition of seniority points would follow naturally from the affirmation of the appeal.

Atty. McEleney asked the Board to proceed with Ofc. Guerrero's appeal without an opinion from Corporation Counsel. Chair Jones said that based on the prior opinions provided to former H.R. Director Theresa Buchanan and comments made by Atty. Gentile at Board meetings, he is unsure of the Board's authority to hear the appeal and if the current version of the eligibility list is considered to be a new list or a modified version of the old list. Ofc. Guerrero said he believes an opinion from Corporation Counsel is unnecessary and believes the Board should issue a clarification of their ruling on his appeal, which he believes the H.R. Director misinterpreted, and that their ruling would be final and binding. Atty. McEleney said Ofc. Guerrero clearly appealed the second list, meaning there is not a timeline problem. Ofc. Guerrero said this appeal is separate from his first appeal, so he is not relitigating the same issue.

Chair Jones said he no longer wishes to ask for an official opinion on the Board's authority to hear the appeal, but he wishes to ask for official opinions on the other questions submitted previously, believing the opinions on those questions may illustrate what needs to be done. Mr. Bates suggested asking for official opinions on the first seven questions submitted previously. Chair Jones asked if Mr. Bates wishes to eliminate questions 8 through 11. Mr. Bates said he does not think Corporation Counsel will respond to those questions because they do not relate to the Board's authority.

Chair Jones asked when the Board accepted Ofc. Guerrero's current appeal. Mr. Daniels said the Board accepted the appeal on October 13th. Chair Jones said this would make January 11th as being 90 days since the appeal was accepted. Ofc. Guerrero asked the Board to proceed with his appeal and make a ruling, then let Corporation Counsel respond if necessary based on that ruling.

The Board members agreed to set December 8, 2021, at 5:30 PM, for the next meeting.

Chair Jones moved to ask the Corporation Counsel for an official opinion based upon the first seven questions submitted to the Corporation Counsel at the November 18, 2021, meeting (see Attachment A), on the authority that the Personnel Appeals Board has, pursuant to the Town Charter Sec. 5.1 (b), “The Corporation Counsel shall appear for and protect the rights of the town in all actions, suits or proceedings brought by or against it or any of its departments, officers, agencies, boards or commissions. The Corporation Counsel shall be the legal advisor of the Town Council, the Mayor, and all town officers, boards and commissions in all matters affecting the town and shall upon written request furnish them with a written opinion on any question of law involving their respective powers and duties” and the Town Charter Sec. 5.1 (c), “When a board or commission requests an opinion, the Corporation Counsel shall prepare a written opinion stating his or her best advice as to the legality, efficacy or validity of the actions or positions proposed by the board or commission requesting the opinion. In a final paragraph of the written opinion, the Corporation Counsel shall indicate whether the conclusion follows with substantial certainty from the applicable law or whether it simply represents his or her best judgment as to applicable law and that there is some degree of uncertainty in determining what a court will ultimately decide. In all cases where the Corporation Counsel has indicated in his or her written opinion that the conclusion follows with substantial certainty from applicable law, such written opinion will be binding upon the board or commission which requests such opinion.”

Mr. Ansah seconded. All voted in favor, none voted opposed.

Mr. Ansah asked if his question about the potential impact to the seven individuals already on the eligibility list could be included in the request to the Corporation Counsel. Chair Jones said the Board did not preclude this from being asked in the future but that they will receive the responses to the first seven questions first. He said he presumes the Board will invite the Corporation Counsel to the next meeting to answer Mr. Ansah’s question.

Chair Jones said the next Board meeting is scheduled for December 8th at 5:30. Mr. Bates said the Charter Review Workshop is taking place on December 7th and invited people to speak, either virtually or in person, on the importance of the Personnel Appeals Board.

Mr. Ansah moved to adjourn.

Mr. Bates seconded. All voted in favor, none voted opposed.

Meeting adjourned at 6:43 PM.

Attachment A

Seven questions, based upon which the Personnel Appeals Board requests an official opinion from the Corporation Counsel pursuant to the Town Charter Sec. 5.1 (b) and (c) on authority the Board has, from the Motion by Chair Jones, seconded by Mr. Ansah, and passed unanimously by the Personnel Appeals Board:

- I. Does the Personnel Appeals Board have the Authority to direct the Human Resources Director, when establishing an Eligibility List pursuant to the Town of East Hartford 's Personnel Rules and Merit System's Section 55.1[Promotional Procedure –Public Safety Divisions {Police & Fire}] -55.8, to exclude the calculation and conferring of the “computing of a candidate's seniority for each examination, (in which) all service shall be included which he/she has had in each classification that is eligible to compete in such examination?” [Section 55.3]
- II. Does the Personnel Appeals Board have the Authority to direct the Human Resources Director, when establishing an Eligibility List pursuant to the Town of East Hartford 's Personnel Rules and Merit System's Section 55.1[Promotional Procedure –Public Safety Divisions {Police & Fire}] -55.8, to include the calculation and conferring of the “computing of a candidate's seniority for each examination, (in which) all service shall be included which he/she has had in each classification that is eligible to compete in such examination?” [Section 55.3]
- III. Does the Personnel Appeals Board have the Authority to direct the Human Resources Director, when establishing an Eligibility List pursuant to the Town of East Hartford 's Personnel Rules and Merit System's Section 55.1[Promotional Procedure –Public Safety Divisions {Police & Fire}] -55.8, to Score an exam inconsistent or in conflict with Section 55.1 through 55.8 and in particular not “as determined by the Human Resources Director, (utilizing) the passing grade or minimum rating which a candidate must achieve in such examination in order to be placed on the eligibility list of the classification for which such examination is being conducted?” [Section 55.3]
- IV. Does the Personnel Appeals Board have the Authority to direct the Human Resources Director, when establishing an Eligibility List pursuant to the Town of East Hartford 's Personnel Rules and Merit System's Section 55.1[Promotional Procedure –Public Safety Divisions {Police & Fire}] -55.8, to Score an exam inconsistent or in conflict with Section 55.1 through 55.8 and in particular when the Written Promotional Exam Notice as published pursuant to the Town of East Hartford 's Personnel Rules and Merit System's Section 55.1[Promotional Procedure –Public Safety Divisions {Police & Fire}] -55.8, had described “the place, date and time of such examination and the qualification which the candidates must have and the requirements which they must meet in order to qualify to compete in such examination and as determined by the Human Resources Director, the passing grade or minimum rating which a candidate must achieve in such examination in order to be placed on the eligibility list of the classification for which such examination is being conducted,” and such passing grade was not in fact published

within said '**Promotional Examination For The Purpose Of Establishing An Eligibility List For Police Sergeant**' announcement and was retained solely in the mind of the Human Resources Director employed at the time of the posting of such announcement? [Section 55.3]

- V. Does the Personnel Appeals Board have the Authority to direct the Human Resources Director, when establishing an Eligibility List pursuant to the Town of East Hartford 's Personnel Rules and Merit System's Section 55.1[Promotional Procedure –Public Safety Divisions {Police & Fire}] -55.8, to, after conducting an appeal, receiving testimony, receiving evidence and rendering a decision, **place promotional exam candidates purported to have failed the oral exam** on the eligibility list.
- VI. Does the Personnel Appeals Board having the Authority in directing the Human Resources Director, when establishing an Eligibility List pursuant to the Town of East Hartford 's Personnel Rules and Merit System's Section 55.1[Promotional Procedure – Public Safety Divisions {Police & Fire}] -55.8, to, after conducting an appeal, receiving testimony, receiving evidence and, rendering a decision, place promotional exam candidates purported to have failed the oral exam on the eligibility list with the ability to score the exam equally as such exam was established and published?
- VII. Does the Personnel Appeals Board having the Authority to score the exam equally as such exam was established and published, when such promotional exam was established pursuant to the Town of East Hartford 's Personnel Rules and Merit System's Section 55.1[Promotional Procedure –Public Safety Divisions {Police & Fire}] -55.8, and after conducting an appeal, receiving testimony, receiving evidence and, rendering a decision, actually score the exam as the **Promotional Examination For The Purpose Of Establishing An Eligibility List For Police Sergeant** Announcement so stated, "The date, time and location of the Oral Panel Examination will be given to those applicants who pass the written examination?" [Note: No "passing grade or minimum rating which a candidate must achieve in such examination in order to be placed on the eligibility list of the classification for which such examination is being conducted," was placed within the **Promotional Examination For The Purpose Of Establishing An Eligibility List For Police Sergeant** Announcement]