

TOWN OF NORTH HAMPTON



*Susan M Buchanan*  
Town Clerk/Tax Collector  
237 Atlantic Avenue  
North Hampton NH 03862

603-964-6029  
603-964-2906 fax  
[sbuchanan@northhampton-nh.gov](mailto:sbuchanan@northhampton-nh.gov)

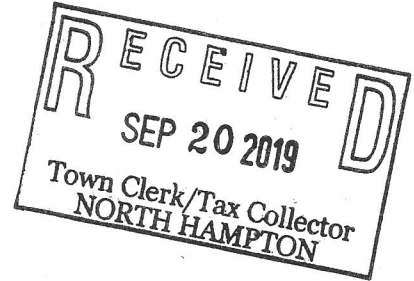
Please sign below upon delivery of Ethics  
Complaint Dated September 20, 2019.

9/20/19

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Jonathan Pinette, Ethics Committee, Chair

55 Post Road  
North Hampton, NH 03862  
September 20, 2019



Susan Buchanan  
Town Clerk  
Town of North Hampton  
Atlantic Avenue  
North Hampton, NH 03862

Dear Ms. Buchanan;

I hereby file an Ethics Code violation complaint against Larry Miller for violation of multiple provisions of the North Hampton Code of Ethics as discussed in detail in the attached complaint.

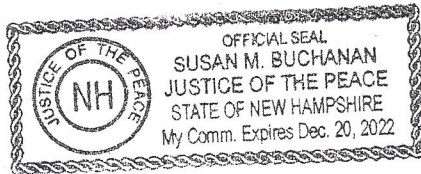
Specifically, Select Board member Miller violated the Code of Ethics by engaging in a lack of transparency, respect and the highest standards of personal integrity. Further, Select Board member Miller failed to comply with RSA 91-A as required by Section 4.02 of the Code of Ethics and state law, and violated his oath of office by not carrying out his duties in compliance with Part 1, Article 8 of the New Hampshire Constitution.

Respectfully submitted,

A handwritten signature in cursive script that reads "Francis A. Ferraro".

Francis A. Ferraro

A handwritten signature in cursive script that reads "Susan Buchanan".



Notary Seal

## Ethics Complaint Against Larry Miller, Select Board Member

Article II. Preamble of the Town of North Hampton Code of Ethics states: "***The Town of North Hampton values honesty, transparency, accountability, respect and civility in the behavior of its Officials.*** All Town Officials, whether elected, appointed or hired, shall act in the best interests of the Town, ***shall maintain the highest standards of personal integrity*** in discharging their public duties, and shall never abuse their positions or powers for improper reasons or personal gain. Therefore, in order to promote and sustain an ethical culture it shall be the duty of all Officials to read this Code of Ethics and to familiarize themselves with its content" (emphasis added.)<sup>1</sup>

Section 4.02 of the Code of Ethics requires: "all Town Officials, Board members, and employees are expected to comply with the provisions of the New Hampshire Right to Know Law (RSA 91-A)."<sup>2</sup>

Part I, Article 8 of the New Hampshire Constitution states: "All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them, Government, therefore, should be open, accessible, accountable and responsive. ***To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted***" (emphasis added.)

Furthermore, the oath of office of Select Board members includes the commitment to carry out one's duties in accordance with the Constitution of the State of New Hampshire.

Select Board Miller violated the Code of Ethics by engaging in a lack of transparency, respect and the highest standards of personal integrity. Further, Select Board Miller failed to comply with RSA 91-A as required by Section 4.02 of the Code of Ethics and state law, and violated his oath of office by not carrying out his duties in compliance with Part 1, Article 8 of the New Hampshire Constitution.

### FACTS

On July 23, 2019, Select Board member Ray (Larry) Miller ("Miller") sent an email to Town Administrator Bryan Kaenrath ("the TA") discussing town business and Miller's position on that business. Miller directed the TA to forward his email to the other Select Board ("Board") members. In his email, Miller laid out in detail to the other Board

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<sup>1</sup> Town of North Hampton Code of Ethics

<sup>2</sup> Ibid

members what he was proposing and specific actions he intended to take at some unspecified time.<sup>1</sup>

RSA 91-A:2-a prohibits deliberation by public bodies on matters under their control in places or at times that are not properly posted as public meetings, or in places where citizens are not able to observe the public body at work.<sup>2</sup> If members of a body communicate Town business using email, they are in fact deliberating outside of a properly posted public meeting, and in a place where the public cannot see the public body at work.

Sequential communications of Town business among a quorum of Board members, whether by electronic means, telephone or through a third party, concerning Town business is a violation of RSA 91-A.<sup>3</sup>

Whether or not Miller planned to later discuss the matter at a public meeting is irrelevant; his discussing Town business in email communications with other members of the Board constitutes a prima facie violation of 91-A.

Neither can Miller claim ignorance of the provisions of 91-A. In 2017, the Town of North Hampton sponsored a seminar on RSA 91-A, lead by the New Hampshire Municipal Association ("NHMA"), for all members of town boards and committees. Miller was a Select person at the time of the seminar and attended the seminar.<sup>4</sup>

Miller has exhibited a pattern of violations of RSA 91-A in violation of the Town's Code of Ethics. Prior to this incident, Miller repeatedly refused to make government records available for public inspection.<sup>5</sup> Miller's response to that request did not address the request for review of the records and, therefore, violated RSA 91-A:4.IV by failing to respond in writing as required by 91-A:4.IV.<sup>6</sup> Even after Miller received confirmation from NHMA that the documents were public records, Miller failed to turn over the documents to the Town Office for more than the prescribed 5 days.

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<sup>1</sup> Appendix A

<sup>2</sup> New Hampshire Municipal Association, Town & City Magazine, April 2012

<sup>3</sup> Ibid

<sup>4</sup> October 25, 2017 email from Michael Tully announcing the seminar. Miller was one of the recipients of Tully's email. Attached as Appendix B

<sup>5</sup> Appendix C

<sup>6</sup> RSA 91-A:4 IV "If a public body or agency is unable to make a governmental record available for immediate inspection and copying, it shall, within 5 business days of the request, make such record available, deny the request in writing with reasons, or furnish written acknowledgment of the receipt of the request and a statement of the time reasonably necessary to determine whether the request shall be granted or denied."

## **FINDINGS**

### **Transparency**

Miller used email to conduct Town business to circumvent the public's right to know in violation of RSA 91-A:2-a. Even if Miller believed he was planning to discuss the subject of his July 23 email during a future public meeting, the fact remains that he communicated his plans and his position on a matter of Town business in private with other members of the Board, a clear violation of RSA 91-A and the Code's requirement for Transparency. Miller's past communications and his refusal to comply with requests made pursuant to 91-A further demonstrates a pattern of violating the Transparency requirement of the Code of Ethics.

### **Respect**

Miller disrespected the public by communicating Town business in a private email.<sup>9</sup>

### **Integrity**

Miller violated state law, specifically multiple sections of RSA 91-A.

Miller, by conducting Town business in private and preventing access to government records, violated his oath of office by failing to uphold the New Hampshire Constitution.

## **CONCLUSION**

Select Board member Miller violated the spirit and letter of the Code of Ethics. Miller failed to act with transparency, respect and the highest standards of personal integrity.

Miller failed to comply with Section 4.02 of the Code of Ethics that requires compliance with RSA 91-A.

By failing to comply with the citizens' right to know, Miller violated his oath of office to uphold the State Constitution, specifically Part 1, Article 8.

The above actions by Miller are clear violations of the spirit and letter of the Code of Ethics and Miller should be found to have violated multiple sections of the Code of Ethics. The Committee should recommend that Miller be sanctioned by the Select Board.

## **RECOMMENDED SANCTIONS**

The Ethics Committee should recommend to the Select Board that Miller be censured. The Board should also require that Miller take the next NHMA course on Right-to-Know and pay the fee at his own expense.

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<sup>9</sup> Miller's July 23, 2019 email was never discussed at a public meeting nor included in the Board's Public Meeting packet under correspondence.

# Appendix A

## Bryan Kaenrath

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**From:** Bryan Kaenrath  
**Sent:** Tuesday, July 23, 2019 12:38 PM  
**To:** Jim Maggiore; Kathleen Kilgore  
**Subject:** FW: Plan for Town Facilities  
**Attachments:** Scan\_0013.pdf

Board Members:

Please see below from Larry.

Bryan

**From:** Ray Miller [mailto:rmiller@northerncomposites.com]  
**Sent:** Tuesday, July 23, 2019 12:23 PM  
**To:** Bryan Kaenrath <bkaenrath@northhampton-nh.gov>  
**Subject:** Plan for Town Facilities

Bryan,

Please forward this to my colleagues. As I stated in our meeting last night, I wish to move ahead now with a plan.

The time has arrived to develop a plan comprehensive for the Town buildings.

1.

I believe the highest priority is public safety. Therefore, the development the FD/PD buildings needs attention first. However, as there is no way to seriously address the gross deficiencies in the FD portion with the Town employees located above the Police station. We must find them a home.

The best, fastest and most economical way to accomplish this is to build 1 new Town building. That building is a new stand alone NHPL on the Homestead lot.

I have attached a scaled drawing which meets all the requisite setbacks.

The Select Board should ask the NHPL Trustees to ask their architect for a cost estimate to be delivered in short order. If they are not interested or not cooperative, the SB should hire its own architect to accomplish the same request.

The builder I approached recently estimated <\$3.5MM using superior finishes for a 10,500sf 1 story building.

With a design in hand, this builder will quote a GMP for the March 2020 ballot.

Either way, I believe the SB will vote to put on the March ballot a Warrant article bond to fund a stand alone NHPL building on the Homestead lot. 1 year later, 2021, the New NHPL building is occupied and the old NHPL building is repurposed as the new Town Administration building.

This building has a replacement value of at least \$1.2MM and thus, as reused, is all cost avoidance. Plus, 1 year is saved.

2.

Simultaneous with item 1., the SB shall create an RFP to rebuild or replace the Fire Station Building in place. This request will be sent to at least 6 architectural firms.

3.

Next, I am asking the SB to direct the Town Administrator to plan the use of the existing Library as a new home for the Town employees now housed above the NHPD.

Using a blowup of the NHPL building, engage the employees in laying out the use of the building and to accommodate the documents and artifacts also stored.

4.

The long-term plan for the Town Clerk/Tax collector is to remain in their present location.

5.

Inquire of the NH Bond bank the cost of a 20 year fixed rate and fixed payment bond for \$2.5MM.

The above sequence needs to be voted on by the SB at its next meeting.

Larry Miller

## Appendix B

From: Michael Tully <mtully@northhampton-nh.gov>  
To: cynjenks@comcast.net <cynjenks@comcast.net>; djfchase@yahoo.com <djfchase@yahoo.com>; Dieter.Ebert@gossinternational.com <Dieter.Ebert@gossinternational.com>; DEtela@aol.com <DEtela@aol.com>; glagassa@comcast.net <glagassa@comcast.net>; jbetter@newenglandmedical.com <jbetter@newenglandmedical.com>; Jim Maggoire <jmaggiore@northhampton-nh.gov>; John Anthony Simmons <johnanthony@clearvictory.org>; jonathanpinette@yahoo.com <jonathanpinette@yahoo.com>; lisajwilson@comcast.net <lisajwilson@comcast.net>; nancymonaghan@comcast.net <nancymonaghan@comcast.net>; rlandman@hlinstruments.com <rlandman@hlinstruments.com>; Timothy Harned <tim@harned.com>  
Cc: Kathleen Kilgore <kkilgore@northhampton-nh.gov>; L Miller <rmiller@northerncomposites.com>; Janet Facella <JFacella@northhampton-nh.gov>  
Sent: Wednesday, October 25, 2017 02:46:02 PM EDT  
Subject: Right to know Educational Seminar

All,

The Town of North Hampton will be hosting an educational seminar with Margaret Byrnes from the New Hampshire Municipal Association on December 7, 2017 from 7pm to 9pm in the Town Hall.

You are receiving this as you are a Chair of either a Board or Committee in the Town of North Hampton. We encourage all members of your Boards/Committees to attend this seminar on the Right to Know Law in New Hampshire. Please check with your members on their availability and report back to me who will be attending no later than Friday November 10, 2017.

Thank you for your anticipated cooperation and we look forward to seeing you there.

Respectfully,  
Michael J. Tully  
Interim Town Administrator  
Town of North Hampton, NH



## Appendix C

During the Town of North Hampton Deliberative Session on February 2, 2019, Select Board member Miller ("Miller") presented the Town-sponsored Warrant Article 13 for the purchase of property at 216 Atlantic Avenue. During the course of his presentation, Miller made use of three (3) drawings of the property ("the drawings").

At the February 25, 2019 Select Board meeting, Francis Ferraro ("Ferraro") asked if the drawings could be posted to the Town web site and/or made available for review. The Board deliberated on the posting of the drawings to the web site. There was a concern that posting to the web site could be considered electioneering. A Board member made a proposal to ask the Attorney General for an opinion on posting to the web site, but the Board voted not to request a determination from the Attorney General regarding posting the drawings on the web site.

Ferraro then requested that the drawings be made available in the Town Office for public review. Miller agreed to make the drawings available at the Town Office.

The next day, February 26, 2019, Ferraro sent an email to the Town Administrator requesting to be notified when the drawings would be available for review at the Town Office. The Town Administrator responded by forwarding a copy of a note from Miller stating that, out of concern that posting of the drawings on the Town web site might constitute electioneering, he was proceeding to ask the Attorney General and the Secretary of State for a determination on this issue.

Miller's note was clearly unresponsive to Ferraro's request to review the drawings at the Town Office, was contrary to a vote of the Board NOT to seek an Attorney General determination and irrelevant since the Board agreed NOT to post any information to the web site concerning any Warrant Article.

On February 26, 2019, Ferraro responded to the Town Administrator and each of the Select Board members re-iterating that his request was to review the actual drawings at the Town Office and had nothing to do with posting anything to the web site. Ferraro's response also laid out the requirements of RSA 91-A, as they relate to government records and that the drawings were government records within the meaning of the RSA 91-A:1-a.

Insomuch as Miller's note only referred to posting the drawings to the web site, his note did not comply with the requirement in RSA 91-A:4. IV 'to either provide the drawings for review, or, within five (5) days, provide a written response as to when the documents would be available for review or why they would not be made available. Miller did not comply with this provision of RSA 91-A with respect to Ferraro's request for a review of the drawings.

During the Public Comment session of the March 11, 2019 Select Board meeting, Ferraro informed the Board that failure to make the drawings available and failure to notify him in writing why the drawings would not be made available for review placed the Town in violation of RSA 91-A. "Chairman Maggiore said the accusation was serious. He said when the Town received a 91-A request, they had 5 days to respond, and that a response could be as simple as acknowledging its receipt." Mr. Maggiore was incorrect in his statement on the required response.<sup>1</sup>

At the March 11, meeting, Ferraro learned that the Town had asked the New Hampshire Municipal Association (NHMA) for their opinion whether the drawings constituted "government records." The NHMA confirmed that the documents were "government records" and subject to RSA 91-A. The Town Administrator notified the Select Board of the NHMA opinion on March 7, 2019 .

Even though Miller was aware, for almost a week, that the drawings were subject to RSA 91-A, only after Ferraro's comments at the March 11 Select Board meeting, did Miller agree to make the drawings available. However, by this time, Miller's response was a moot point since the election was to take place the next day and Miller wouldn't get the drawings to the Town Office until sometime on election day, too late to be of any use by any citizen.

It was clear that Miller's actions were an attempt to prevent review of the drawings before the election inasmuch as the drawings might provide information unfavorable to Miller's proposed purchase of the property.

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<sup>1</sup> RSA 91-A:4 IV "If a public body or agency is unable to make a governmental record available for immediate inspection and copying, it shall, within 5 business days of the request, make such record available, deny the request in writing with reasons, or furnish written acknowledgment of the receipt of the request and a statement of the time reasonably necessary to determine whether the request shall be granted or denied."