

# APPROVED MINUTES

January 19, 2017

Kittery Town Council  
Special Meeting  
Requested by Gary Beers, Chair

Council Chambers

1. CALL TO ORDER: Chairperson Beers called the meeting to order at 6:00 p.m.
2. INTRODUCTORY: Chairperson Beers read the introductory.
3. PLEDGE OF ALLEGIANCE: Chairperson Beers led those present in the Pledge of Allegiance.
4. ROLL CALL: Answering the roll were Councilors Frank Dennett, Jeffrey Pelletier, Jeffrey Thomson, Kenneth Lemont, Judy Spiller, Vice Chair Charles Denault and Chairperson Beers.
5. EXECUTIVE SESSION

a. (010217-1) The Kittery Town Council moves to go in to Executive Session with the Town Manager and Attorney William Dale in accordance with 1 M.R.S. §405 (6) (F) to discuss information concerning constituent complaints contained in records received by the Town, where access by the general public to those records is prohibited by 1 M.R.S. §402 (3) (C-1) (1) (d).

**IT WAS MOVED BY COUNCILOR DENAULT TO GO IN TO EXECUTIVE SESSION AT 6:15 P.M.  
SECONDED BY COUNCILOR DENNETT.**

Discussion:

Councilor Thomson stated that the agenda item does not list individuals names other than Attorney William Dale. The report received by the Town Council two days ago, was clearly marked confidential. We received correspondence from our Town Manager indicating that after her discussion with Attorney Dale, the contents of the document were indeed determined to be confidential and exempt from Public Records and Proceedings Freedom of Information Access. It further goes on to say, based on the above, there is sufficient standing to deem the report confidential at this time. So, based on that I would be curious to know the source of the information that appeared in the printed media this morning, number 1; and number 2, if Attorney Dale could speak to the issue as to whether or not, because the information has appeared in the public, that the Town Council has placed itself in a prejudicial position by going into executive session. Chairperson Beers stated that the origin to be outside the purview to discover at the time. He invited Attorney Dale to respond to Councilor Thomson's remarks.

Attorney William Dale, Jensen Baird Gardner & Henry, introduced himself and spoke as a replacement for Duncan McEachern, Kittery Town Attorney, who could not attend the meeting. The first question is whether the information is confidential, even though it has been in the newspaper. From his perspective, as long as the Council did not submit it to the newspaper or caused it to be in the paper, the Town is not in the position of some sort of prejudice. The second point is that this [the executive session] is to be confidential and to decide whether the matter will be pursued further. Maine law allows for that.

Councilor Thomson stated the only individuals that had the report were Attorney Dale, Town Manager Amaral, and the seven Councilors. Attorney Dale replied that he could not confirm whether that was true. That was his understanding and stated that as one of those said nine individuals, he did not

## APPROVED MINUTES

release it to the press. Councilor Spiller stated that this is a troubling situation and obviously someone released information about this report to the press. We are in a compromised situation going into executive session. Chairperson Beers understood that we are not in a compromised situation. Attorney Dale confirmed that statement. Chairperson Beers added that the newspapers are aggressive in soliciting what they wish to print and members who may be familiar with the some of the substance of the report are free to communicate as they choose. There is no implication nor evidence anywhere that a member of the privileged document presented to Council, protected by Statute, has released it in any fashion. Councilor Spiller reiterated what Attorney Dale mentioned that as long as none of the nine individuals who received the report released it to the press. Attorney Dale added that if somebody else has not released it and any of the material released and its defamatory then that person may get sued. He did not know who leaked the documents. Chairperson Beers recognized that the press is not required to divulge the source of their materials, so that it publishes.

Chairperson Beers asked each Council member if they did or did not release the document to anybody, anywhere, or at any time. Councilor Dennett answered no; Councilor Pelletier answered no; Councilor Thomson answered no. Vice Chairperson Denault asked to repeat the question and Chairperson Beers asked whether he did or did not release the confidential document presented to the Town to anyone, anywhere, or at any time outside the Town. Vice Chairperson Denault replied that a portion of the report that was sent to the victims to confirm the statements were correct, which was long before the decision was rendered by Attorney Dale. Councilor Spiller answered no and that she received the report January 18, 2017 and it had been safely secured in her home prior to the meeting. Councilor Lemont answered no and Town Manager Amaral answered no.

Councilor Spiller asked that if its determined that one of us released the substance of the report, then does that person become liable for defamation of character. Attorney Dale explained two points: one, that if one of the seven councilors released it and was told not to, that councilor could be subject to discipline by the other six councilors in violating a Council rule; and, second, if somebody released something, whether it is a councilor, the Town Manager, the attorney, or the clerk, released something to the public that is defamatory and untrue, that person may be on their own about being sued. Even though Ms. Grinnell is the Planning Board Chairman, it doesn't mean that she cannot sue people. If somebody says something about her that is bad and untrue, she can sue them.

Chairperson Beers affirmed that the document was not released anywhere, at any time, by himself. It has been in his possession ever since receipt of the document.

Councilor Thomson cited a portion of Town Manager Amaral's memorandum stating, "as Council knows, this is a serious matter that impacts Kittery as a community. Accordingly, the outline process and determination of the Freedom of Access applicability has been carefully considered. I respectfully remind the Council of the importance of maintaining the integrity of confidentiality associated with the Executive Session from the Maine Municipal Offices Manual page 108 since the purpose of an Executive Session is to provide confidentiality for certain persons, or subjects, or individual Councilors, or select persons who discuss the subject matter of an Executive Session with others, may be opening themselves and the municipality to liability and may become the subject of discipline by the Board."

Councilor Pelletier asked whether Ms. Grinnell was afforded a copy of the report. Chairperson Beers replied that is not the case and there has been no confirmation or denial by anybody of the municipal officers what the subject matter is nor whom it actually deals with. Speculation in the newspaper from other sources that we have no privilege to know is not within our purview to deal with. We have affirmed that the material is confidential and been protected since its receipt and not been released with any speculation by any member or municipal officers and officials as to its contents.

## **APPROVED MINUTES**

**ROLL CALL VOTE WAS TAKEN AND MOTION PASSED, 5/2/0 WITH COUNCILORS THOMSON AND SPILLER VOTING IN OPPOSITION.**

**IT WAS MOVED BY COUNCILOR THOMSON AND SECONDED BY COUNCILOR SPILLER TO COME OUT OF EXECUTIVE SESSION AT 8:27 P.M.**

**A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0/0.**

Chairperson Beers noted that the executive session matter was unresolved and that administration would be taking action and communicating with appropriate parties as necessary.

### **6. ADJOURNMENT**

**IT WAS MOVED BY COUNCILOR THOMSON, SECONDED BY COUNCILOR DENAULT TO ADJOURN THE MEETING AT 8:28 P.M.**

**ALL WERE IN FAVOR BY A VOICE VOTE. MOTION PASSED, 7/0/0.**