

Town of Snow Hill Ethics Commission Regulations

Part I. Definitions.

- A. *“Advisory Opinion”* means an opinion issued by the Commission pursuant to Part II of these regulations.
- B. *“Commission”* means the Snow Hill Ethics Commission established pursuant to Chapter 16, as amended, of the Town of Snow Hill Code.
- C. *“Decision”* means written findings of fact and conclusions of law issued pursuant to Part III of these regulations.
- D. *“Regulations”* mean the Town of Snow Hill Ethics Commission Regulations enacted pursuant to Chapter 16, as amended, of the Town of Snow Hill Code.
- E. *“Town of Snow Hill Public Ethics Ordinance”* means Chapter 16, as amended, of the Town of Snow Hill Code.

Part II. Regulations for Issuing an Advisory Opinion.

Issuance of an Advisory Opinion pursuant to the Town of Snow Hill Public Ethics Ordinance shall proceed as follows:

- A. **Procedure.** Any person subject to Chapter 16 may request the Commission for an advisory opinion concerning the application of the provisions of the Town of Snow Hill Public Ethics Ordinance. Such request shall be in writing. The Commission shall respond to the request within sixty (60) days, or as soon thereafter as is practical, provided that the Commission’s interpretation of these provisions is based on the facts provided or reasonably available to it.
- B. **Issues.** In an advisory opinion, the Commission shall limit its findings to matters of law. The Commission shall not make any findings of fact regarding the conduct or intent of any person in an advisory opinion.
- C. **Effect.** Until amended or revoked, an advisory opinion shall be binding on the Town, the Town Council and the Ethics Commission in any subsequent actions concerning the person who sought the opinion and who acted on it in good faith, unless material facts were omitted or misstated in the request for the opinion. Such opinion shall not be binding in any Court action initiated by any private citizen.

- D. **Confidentiality.** Copies of the advisory opinion shall be submitted to the Mayor and the Council and made available to the public within five (5) working days after the opinion has been rendered. However, the name of the person requesting the opinion and the names of all persons or business entities mentioned in the opinion shall be deemed confidential information and shall not be disclosed by the members of the Commission unless each person or business entity waives such confidentiality.

Part III. **Regulations for Adjudicating Alleged Violations.**

Investigation and adjudication of alleged violations of the Town of Snow Hill Public Ethics Ordinance shall proceed as follows:

A. **Complaint.**

- (1) **Who may file.** Any person may file a complaint with the Commission alleging a violation of any of the provisions of Chapter 16. The complaint shall be submitted in a sealed envelope to the Town Manager. The Town Manager shall thereafter promptly transmit the sealed envelope to the Chair of the Ethics Commission.
- (2) **Contents.** The complaint must assert facts that if proven true would constitute a violation of the provisions of Chapter 16. It is not necessary that the complaint cite the chapter provisions allegedly violated, but such citation is advised. All complaints shall be in writing and signed under oath. Complaints initiated by the Commission shall be signed by the Chair.
- (3) **Limitation on actions.** No complaint shall be processed if filed more than one year from the date of the action alleged to constitute a violation.

- B. **Notice to parties.** Within fifteen (15) working days after the complaint is transmitted to the Ethics Commission, the Commission shall provide the complainant with written acknowledgment of receipt of the complaint and shall provide the respondent with copies of the complaint. Within ten (10) working days after acknowledging receipt of the complaint, the Commission shall provide written notice to the complainant and to the respondent of the date for a preliminary hearing, if it is determined that a preliminary hearing shall be held.

- C. **Dismissing the complaint.** The Commission, at any time, may dismiss a

complaint if the complaint does not allege conduct which would be a violation of Chapter 16. Before a complaint is dismissed for failure to allege a violation, the complainant shall be permitted one opportunity, within a time period to be specified by the Commission, to revise and resubmit the complaint.

D. Preliminary hearing.

- (1) **Right to Counsel.** The complainant and the respondent shall have the right to be represented by counsel at any preliminary or final hearing. The Commission shall be represented by the Town Attorney on complaints initiated by the Commission.
- (2) **Issue.** The issue at a preliminary hearing shall be whether there exists reasonable grounds to believe that a violation of Chapter 16 has occurred.
- (3) **Stating the complainant's case.** The Town Attorney shall state the alleged violation and shall describe in narrative form the testimony and other evidence which would be presented to prove the alleged violation as stated in the written complaint. The complainant shall then be given an opportunity to describe in narrative form the testimony and other evidence which would be presented to prove the alleged violation. All statements at a preliminary hearing shall be under oath. There shall be no cross-examination. There is no subpoena power at a preliminary hearing. Members of the Commission may question the complainant and the respondent.
- (4) **Respondent's right to respond.** The respondent shall have the opportunity to respond but is not required to attend or make any statement. Such person may describe in narrative form the testimony and other evidence which would be presented to disprove the alleged violation. If the respondent agrees that a violation has occurred, he or she may at any time waive the right to a final hearing and consent to a decision based on the facts alleged in the complaint or otherwise agreed upon. The disposition of any complaint without final hearing shall be by written order of the Commission in the form specified by subsection D(5) of these regulations.
- (6) **Commission's decision.** At the conclusion of the preliminary hearing, the Commission shall determine whether a final hearing should be held. If the Commission does not determine that reasonable grounds exist to believe that a violation of Chapter 16 has occurred, the complaint shall be

automatically dismissed. If at any time during the preliminary hearing the Commission determines that there is an ambiguity in the law that prevents it from making a determination of whether reasonable grounds exist to support a violation, and that there was no apparent intent to violate the code, the complaint shall be dismissed. In this event, the Commission shall forthwith report its determination that an ambiguity exists to the Mayor and Council, while maintaining the confidentiality of the proceeding. If the Commission decides that there are reasonable grounds to believe that a violation occurred, it shall schedule a final hearing. A decision to conduct a final hearing is not a finding that a violation has occurred.

- (7) **Confidentiality.** During any preliminary inquiry by the Commission or following the filing of a complaint, all meetings and activities of the Commission in connection with the complaint and the preliminary hearing shall be conducted in a confidential manner. The Commission, the complainant and the respondent shall not disclose any information relating to the complaint, except that the Commission may release any information agreed upon in writing by the respondent.

E. **Final hearing.**

- (1) **Timing.** The final hearing shall be held within forty-five (45) days, or as soon thereafter as practical, following the preliminary hearing and a determination by the Commission that there are reasonable grounds to believe that a violation of Chapter 16 has occurred. The Commission may grant one postponement each to the complainant and to the respondent. Each postponement shall not exceed thirty (30) days.
- (2) **Subpoena power.** At least fifteen (15) days prior to the date of the scheduled final hearing, the respondent and Town Attorney may ask the Commission to seek the attendance of persons and production of evidence at the final hearing, pursuant to the Commission's subpoena powers. In the event that any person declines to respond to the request, the Commission may apply to the circuit court for an appropriate order.
- (3) **Closed hearing.** The final hearing will be closed to the public. All witnesses shall make their statements under oath. An audio or video recording of the hearing shall be retained by the Commission. The Town Attorney shall state the alleged violation and shall present such testimony or other evidence necessary to prove the alleged violation as stated in the

written complaint. The respondent will be afforded an opportunity to cross-examine witnesses and to present evidence.

- (4) **Standard of proof.** The issue at a final hearing shall be whether a violation of Chapter 16 has occurred. The Commission shall make its determination based on the preponderance of the evidence in the record of such hearing.
- (5) **Decision.** After consideration of the evidence, the Commission shall prepare a written report setting forth its findings of fact and conclusions of law with respect to each of the alleged violations. If at any time during the hearing the Commission determines that there is an ambiguity in the law that prevents it from making a determination of whether a violation has occurred, and that there was no apparent intent to violate the code, the complaint shall be dismissed. In this event, the Commission shall report its determination that an ambiguity exists to the Mayor and Council. A copy of the report shall be mailed or delivered to the complainant and the respondent within five (5) working days from the date of the decision. The report shall be made available to the public and a copy submitted to the Mayor and the Council within ten (10) working days from the date of the decision.