

REPORT OF THE
GORHAM TOWN COUNCIL
SPECIAL MEETING
November 12, 2019

Vice Chairman Suzanne Phillips opened the meeting with the Pledge of Allegiance. There were 15 members of the public present at the start of the meeting.

Roll Call: Vice Chairman Phillips, Councilors Pratt, Shepard, Wilder Cross, Smith and Hager. Also in attendance were Town Manager Ephrem Paraschak, Town Clerk Laurie Nordfors and Town Attorney Mark Bower.

Moved by Councilor Shepard, seconded by Councilor Wilder Cross and VOTED to go into executive session, pursuant to 1 M.R.S.A § 405(6)(E) for consultation with legal counsel. **6 yeas**

Chairman Hartwell arrived as Councilors were going into executive session.

Moved by Councilor Pratt, seconded by Councilor Shepard and VOTED to come out of executive session. **7 yeas**

Item # 9513 Moved by Councilor Phillips, seconded by Councilor Shepard and ORDERED, that the Town Council finds that Janet H. Kuech does meet the qualifications set forth in Sec. 202 of the Town Charter to serve as a Town Councilor.

Councilor Smith asked the Council whether he would have a conflict of interest in the vote.

Moved by Councilor Hager, seconded by Councilor Wilder Cross and VOTED that Paul Smith does not have a conflict of interest to vote on the item. **6 yeas, 1 abstention (Smith)**

Town Attorney Mark Bower summarized his legal opinion on the interpretation of Section 202 of the Town Charter.

Janet Kuech addressed the Council and stated that she believes that she can serve the Council, as an employee of the School Department, without a conflict of interest.

The Town Councilors all stated their opinions and concerns.

Moved by Councilor Phillips, seconded by Councilor Shepard and VOTED to amend the item to authorize the Council Chair to sign a memo written by the Town Attorney identifying the findings of the discussion. **7 yeas**

Town Attorney Mark Bower summarized the rationales expressed by the Councilors during their discussion of the item as follows: The intent of the Charter was to cover all Town Employees not just Officers, that Ms. Kuech would have a conflict of interest voting for the School Budget and other School issues, so the Council does not see how she could be seated without having an inherent conflict of interest. There are also concerns that the Council would be down to six votes on those issues instead of seven due to the conflict of issue. The Council members expressed that they didn't think Ms. Kuech could vote on any issues concerning the School Department including the High School expansion due to this conflict of interest that it would set a precedent for School employees to make up the entire Town Council resulting in the balance of power shifting if the Council is made up of School Employees, and finally that there is an inherent conflict of interest when an Employee of the Town serves on the Council.

Moved by Councilor Hager, seconded by Councilor Phillips and VOTED to strike the previous amendment. **7 yeas**

Janet Kuech's Attorney, Jon Goodman stated that Ms. Kuech is not an Officer in the Town and if she has a conflict she can recuse herself from the vote. He asked the Council to consider this before their vote.

**Item 9513 was voted, 3 yeas, 4 nays (Hager, Smith, Wilder Cross, Shepard)
Item fails**

Moved by Councilor Shepard, seconded by Councilor Smith and VOTED to authorize the Town Attorney to prepare a memo memorializing the facts and findings and allow the Chair to sign it. **7 yeas**

The notice of decision is as follows:

GORHAM TOWN COUNCIL

**Determination of Qualifications of Town Councilor
(Pursuant to Town Charter, Art. II, Sec. 202, 207)**

NOTICE OF DECISION

At a special meeting held on November 12, 2019, the Gorham Town Council met pursuant to Sec. 207 of the Town Charter to consider whether Janet H. Kuech meets the qualifications set forth in Sec. 202 of the Town Charter to serve as a Town Councilor, given her employment with the Town as an education technician ("ed tech") with the Gorham School Department. Ms. Kuech was notified of the meeting and had the opportunity to be heard both on her own behalf and through her attorney, Jonathan Goodman. After hearing all of the information provided, the Council made the following decision:

Decision: By a vote of 4-3, the Council finds that Janet H. Kuech does not meet the qualifications to serve as a Town Councilor, as set forth in Art. II, Sec. 202 of the Town Charter, for the reasons set forth below.

Applicable Charter Provisions:

Art. II. Sec. 207 of the Town Charter provides:

“Sec. 207. Council to Judge the Qualifications of its Members. The Council shall be the judge of the election and qualifications of its members and for such purpose shall have power to subpoena witnesses and require production of records, but the decision of the Council in any such case shall be subject to review by the courts.”

Art. II, Sec. 202 of the Town Charter provides:

“Sec. 202. Qualifications. Councilmen shall be qualified electors of the Town and shall reside in the Town during their term of office. They shall hold no office of emolument or profit under the Town Charter or Ordinances. If a Councilman shall cease to possess any of these qualifications or shall be convicted of a crime involving moral turpitude, his office shall immediately become vacant.”

Findings:

The Council expressed the following rationales for the above decision:

First, the Council understands that, when Sec. 202 of the Town Charter was adopted, the language “office of emolument or profit under the Town Charter or Ordinances” was intended to cover all employment positions of the Town (including school employees), not just those offices expressly referenced in the Charter.

In addition, the Councilors believe that Ms. Kuech would have an inherent conflict of interest in voting for the school budget and other issues related to the schools, including but not limited to the high school expansion. As a result, the Councilors have concerns about having only six votes on key issues relating to the schools, rather than the full Council, due to Ms. Kuech’s conflict of interest. Given that conflict, the Council does not see how Ms. Kuech could be seated as a Councilor under Sec. 207.

Finally, the Council’s decision is based on the concern that seating Ms. Kuech would upset the balance of power in the Town by setting a precedent that could ultimately allow the Town Council to be comprised entirely of Town or school employees. The Council believes that there is an inherent conflict of interest when an employee of the Town serves on the Council, which is responsible for setting the municipal and school budgets, creating an incompatibility in those offices.

Appeal: As provided in Art. II, Sec. 207 of the Town Charter, this decision of the Town Council is subject to review by the courts. Any appeal of this decision must be made within thirty (30) days of the Town Council’s vote and filed in Superior Court (Cumberland County) in compliance with Rule 80B of the Maine Rules of Civil Procedure.

DATED:

**Benjamin Hartwell
Chairman, Gorham Town Council**

Moved by Councilor Hager, seconded by Councilor Shepard and VOTED to adjourn. **7 yeas**

Time of adjournment: 6:50pm

A True Record of Meeting
11/12/2019

ATTEST _____ 11/13/2019
Laurie Nordfors, Town Clerk