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**Admitted in ME, MA, and NH*

December 14, 2012

Town of Raymond
Don Willard, Town Manager
401 Webbs Mills Road
Raymond, Maine 04071

Dear Don:

At the request of the Board of Selectmen, you have asked for advice from legal counsel on the question of whether it would be out of order for a Board member to address the Board "as a member of the public" during any public comment portion of a meeting.

In my experience and in the experience of my colleagues in Bernstein Shur's Municipal Practice Group who have represented many municipalities over many years, the conduct in which a member of the Board gets up from his seat and goes to the podium to speak as a member of the public during public comment period either on a matter that is not on the agenda or on an item for which he is also participating as a Board member is inappropriate and unnecessary. It takes up time devoted to the public for comment. The conduct can also be extremely confusing to the public and it is simply disruptive as a matter of procedural order.

Selectmen are already given ample time to speak during Board of Selectmen meetings and Selectmen are not restricted from voicing personal opinions on relevant items during the meeting from the Board table. A Board member's right to free speech is preserved in the Board member's right to engage in debate as a Board member in the proper course of proceedings and in the Board member's ability to submit agenda items for consideration by the Board.

As members of the Board, Selectmen are subject to the procedural rules of the Board. The Board of Selectmen in Raymond is subject to its own Bylaws and Policies (the "Bylaws") amended most recently on December 14, 2010. Section 11 of the Bylaws, "Public to Address Board," states that once an item has been introduced, there will be time devoted to any questions any Board member may have, followed by public comment on the item, followed by the Board's debate and vote. Each of these portions of discussion is separate and distinct, occurring in sequence, so that all parties can speak in an organized and efficient manner that facilitates the Board's decision-making process. While Section 11

deals specifically with agenda items, the same principles apply to the general comment period.

While I think the existing rules are sufficiently clear, the Board of Selectmen could decide by majority vote to amend the Bylaws and add a specific requirement to prohibit the conduct in question. Such a requirement could be stated as follows:

"A Board member shall not be permitted to speak as a member of the public during any public comment periods, except on a matter where the Board member has recused himself or herself in order to assert or protect his or her personal interests or property rights."

Please feel free to contact me with further questions.

Sincerely,

Shana Cook Mueller

SCM/pjh