

**Town of Greenwich**

**Board of Ethics**



**Official Reports**

**for**

**Fiscal Years 2020-2024**



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Editor

*This contains reports of the Advisory Opinions of the Board of Ethics of the Town of Greenwich, Connecticut. The reports contain information drawn from the Board's official records. Consistent with the Greenwich Code of Ethics, information concerning the specific identity of the person requesting an advisory opinion has not been included. However, the relevant facts presented to the Board are summarized, the issues dealt with are identified and the conclusions of the Board are reported using the language from the original opinion or previous reports thereof to the extent possible. These reports supplement the volume: Greenwich Board of Ethics: Official Reports 1965 – 2012. Please refer to the Introduction of that volume for important additional information concerning the use of these reports.*

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**July 2019– June 2020**

**The following Advisory Opinion was rendered in the 2019-2020 Fiscal Year.**

## Advisory Opinion No. 20-01

**Date:** 5/12/20

**Topics:** Exerting Influence, Indirect Interest, Subcontractors, Substantial Interest, Voting on Actions or Transactions

**Code Sections:** Sections 2, 4 and 5

### **Statement of Facts:**

A member of the Architectural Review Committee is a professional landscape architect. The Committee member also serves as the managing partner and majority owner of a landscape design firm and requested an advisory opinion prior to submitting a bid on behalf of the firm to provide landscape design services to the Town. The request for the opinion was made as a result of Section 1.10 of the Town's purchasing ordinance, which requires Town Officers to seek an advisory opinion from the Board of Ethics whenever a business in which the Town Officer has a financial interest is involved in a procurement.

The Town's request for proposals calls for the contractor to develop a master plan for a Town park. The bid submitted provides for the Committee member's firm to serve as the primary consultant leading a team that will include members and employees of that firm and several subcontractors. It is estimated that the total cost

of the services will be under \$100,000. One of the subcontractors is also a member of the Architectural Review Committee. However, it was expected that the involvement of this other member will be “supplemental and supportive in nature” and the fees associated with the role “would likely be minimal.”

The role of the Architectural Review Committee is advisory, but encompasses many aspects of the Town’s land use regulations. Its primary role is to assist the Town in preserving the Town’s natural landscape and the harmony of newly created landscapes and structures with the Town’s natural landscape, terrain, existing structures and streetscapes. The Committee is also responsible to assist the Town in protecting neighboring owners and property users by making sure that reasonable provision has been made in plans approved by the Town for such matters as sight and sound buffers, control of trespass lighting, the preservation of views, light and air, and those aspects of design not adequately covered by specific regulations. The Committee may also be asked to assist the Town in determining whether relevant land use standards have been complied with in connection with its review of projects under construction or completed projects awaiting certification.

Under Section 99 of the Town Charter, any “major” redesign of public property or project that involves relocation of a street or changes to the extent or location of transportation routes is required to be approved by the Planning and Zoning Commission. The Director of the Department of Planning and Zoning has advised the Board that, if the master plan developed under the anticipated contract were considered to involve a major redesign of Roger Sherman Baldwin Park, it is likely that the Planning and Zoning Commission would request review by the Architectural Review Committee. The Committee Member has advised the Board that; in the event of any such review of a master plan prepared by the member’s team, the members of the team would refrain from any discussion of the matter with members or staff of the Committee and from participating in discussions of the Committee and votes on the matter.

Although the request for an advisory opinion was made significantly in advance of the scheduled date for submission of bids, the closure of Town facilities and restrictions on meetings due to current pandemic have limited the opportunities for the Board to discuss the matter with the Committee member or render an

opinion prior to the due date for submitting the bid. The Board normally recommends that persons involved in bidding on Town contracts who are members of Town boards, commissions and committees formally notify the head of the body and the director of the Town Department involved in the procurement in advance of submission of the bid. In this case the Board was unable to consider the request in time for this to be done in advance.

In the request for the advisory opinion, however, the Committee member stated: "I would like to clarify that I have had no involvement in the preparation of this RFP or any prior knowledge, involvement or activity with the town or anyone regarding this project in my capacity as a volunteer on the Architectural Review Committee or in any other way at this point. I do feel that I can participate fairly and without bias or unfair advantage of any sort." The Committee member has also confirmed to the Board that no member or employee of the firm or any subcontractor has had any contact with the individuals who established the specifications for the contract or with any member of the selection committee that will recommend award of the contract.

The normal process of submitting a proposal to the Town necessarily involves some degree of contact with the employees of the Purchasing and Administrative Services Department. In response to further inquiry from the Board, the member indicated that: "Once the RFP was issued, I contacted the town through the prescribed method in the RFP process to ask a few questions. My first question was directed to [a member of the Purchasing Department], to ask about whether or not my involvement in ARC would preclude my firm from issuing a bid for this work. She did not initially know the answer to that question, so I reached out to the [Superintendent of Parks]. That inquiry resulted in my sending [the Board of Ethics] a formal request for this advisory opinion. Subsequent to that, I phoned the number listed on the RFP for two other questions to seek clarification in order to prepare our bid accurately. In this regard, I spoke to [another member of the Purchasing Department], who answered my brief questions. One question related to whether the respondents to the RFP were expected to include concept drawings in their proposal. The other was about whether a respondent could submit as a co-equal partnered team, or if it needed to be a single prime design contractor." The Board

has considered these contacts and considers that personal contact with the employees of the Purchasing and Administrative Services Department handling the bidding has been limited only to questions and responses regarding procedure. In that process and in the bid itself, no mention was made of the position of any member of the team as a Town Officer, except in relation to the need to obtain an advisory opinion.

**Questions Presented:**

1. For purposes of Section 4 of the Code of Ethics does a Town Officer have a “substantial financial interest” in a Town transaction as a subcontractor for a professional services contract when the subcontractor’s role is expected only to be supplemental and supportive in nature and the fees associated with the role likely be minimal?
2. Is the submission of a bid for a Town contract a “transaction” under Section 3 (4) of the Code of Ethics?
3. Does the Code of Ethics prohibit an individual from providing professional services to the Town?
4. How can a Town Officer avoid exerting influence over an action or transaction that the Town officer has a substantial financial interest in, particularly where persons who are involved with the individual’s work as a Town Officer may act in a supervisory or evaluation capacity with respect to such professional services?

**Discussion and Conclusion:**

The Code of Ethics only authorizes the Board of Ethics to give advisory opinions to Town Officers. However, it permits any Town Officer to request an advisory opinion with respect to any matter involving the interpretation of the Code. During the 1970’s, a number of the members of the Board were individuals who had served as members of the 1<sup>st</sup> Selectman’s’ Special Committee that drafted the code of Ethics. It is noteworthy therefore, that three of the first four advisory opinions rendered by the Board involved questions raised by Town Officers about the activities of other Town Officers. (A71-01, A72-01, A78-01)

Since the Committee member requesting this advisory opinion indicated that another member of the Committee would be serving as a subcontractor in connection with the proposal, the Board will address the issue of the subcontractor's interest in the proposal, since it believes that the remaining issues apply equally to the subcontractor.

#### *The Subcontractor's Interest*

An indirect interest is defined in Section 1 of the Code as including "the interest of any subcontractor in any prime contract with the Town." In this case, the role of the subcontracting fellow Committee member has been described as "supplemental and supportive in nature" and the associated fees likely to be "minimal." However, Section 1 further defines "substantial financial interest" as "any financial interest, direct or indirect, which is more than nominal." The Board has always considered this to indicate that Town Officers should take a strict view of what is considered a "substantial financial interest."

The Board has, for example, considered part time compensation of \$300 a year for services as an instructor in a Town sports clinic to be a substantial financial interest (A09-02). It has also suggested that a coffee table book has value, even if was undeterminable (A02-10). Consequently, the Board believes that the sub-contractor should be considered to have a substantial financial interest in the procurement and in any resulting transaction until the facts clearly prove otherwise.

#### *Submission of the Bid as a Town Transaction*

Section 1 of the Code also defines "transaction" in pertinent part as follows:

"Transaction shall mean and include the *offer*, sale or furnishing of any real or personal property, material, supplies or *services* by any person, directly or indirectly, as vendor, *prime contractor*, *subcontractor* or otherwise, for the use and benefit of the Town *for a valuable consideration...*" (*Emphasis added*)

Consequently, the Board has always considered a proposed transaction with the Town as a transaction in which a Town Officer could have a substantial financial



interest, even if an award has not been made. This makes Sections 3, 4 and 5 of the Code applicable to bid submissions as well as actual contracts awarded.

*Permissible Role of Town Officers in Transactions*

The Board of Ethics has consistently cautioned Town Officers against creating the appearance of impropriety, while approving the participation of Town Officers in transactions with the Town as long as appropriate steps were taken to avoid that appearance. For example, in 1983, the Board cautioned against communications with members of the Purchasing Department, indicating "...it is difficult to know what communications may influence a decision. Therefore, the Board advises Town Officers to avoid discussions with those in Town government involved in the purchasing decision with respect to any product or service that the company employing the Town Officer may be seeking to provide the Town." (A83-02).

More recently, a member of the Commission on Aging requested an advisory opinion from the Board of Ethics prior to submitting a bid to the Town for services related to outpatients at Nathaniel Witherell, the Town's rehabilitation and convalescent facility. In that opinion (A17-01), the Board summarized the best practices it recommends to Town boards, commissions, committees and agencies concerning transactions between the Town and their appointed members, including written procedures and disclosures to all appropriate persons. In view of the steps taken by the Commission member in that case to avoid the appearance of a conflict of interest, including requesting an opinion from the Board in advance of submitting the bid, the Board indicated that it was not necessary for the member to resign from the Commission on Aging prior to submitting the proposal for services.

In that case, the Board summarized prior cases in which it has found consistently that the it is not the *existence of a financial interest* that the Code prohibits, rather it is the *exercise of influence* with respect to that interest that the Code prohibits:

"The Board has previously indicated that Town Officers do not need to resign their positions in order to engage in Town transactions as long as appropriate steps are taken to ensure that Town actions and transactions are not influenced by the Town Officer and the Town

Officer does not participate in any votes concerning the actions or transactions. See Advisory Opinion 90-01 (member of Tax Review Committee of RTM employed by Housing Authority), Advisory Opinion 98-02 (RTM member serving on Board of local non-profit), Advisory Opinion 01-02, (member of the Inlands, Wetlands and Watercourses Agency involved with non-profit applying for an approval), Advisory Opinion 02-05 (employee of custom home builder serving on Planning and Zoning Commission). These opinions indicate that the existence of the interest need not require the Town Officer to resign in order to participate in a transaction with the Town. But they also confirm that appropriate procedures should be followed to insulate the Town Officer from the opportunity to influence the transaction.”

Similarly, in this case, neither the existence of a Town Officer as an owner of the prime contractor making a proposal to the Town, nor the involvement of another Town Officer in the team assembled by the contractor, necessarily results in a violation of the Code of Ethics. Rather, the Code only concerns itself with the exercise of influence in connection with the award and performance of the contract.

As volunteers working for Town boards, commissions and committees, many individuals gain a high degree of familiarity with, and understanding of, the Town’s activities, objectives, procedures and requirements. This may give them an advantage when bidding on Town contracts, but it should not be considered an unfair advantage. Indeed, it is an advantage similar to that enjoyed by any existing Town contractor and it would be manifestly unfair, and inimical to the interests of the Town, to make it into a disadvantage. The Code of Ethics does not forbid Town Officers from engaging in transactions with the Town. It simply requires that they maintain an appropriate distance from the selection, supervision and performance evaluation processes and not use their position as Town Officers to influence these processes.

### *Avoiding the Appearance of Exerting Influence*

In prior advisory opinions, the Board has encouraged each Town board, commission or committee to establish procedures relating to participation by its members in Town transactions based on the particular circumstances of their entity. However, it is logical for an entity to wait until the need arises to implement these policies, so that they aren't formulated in a vacuum. Normally, we would expect such procedures to involve immediate notification of the head of any such board, commission or committee and the director of the Town department involved, but we understand that the Committee has not yet adopted such procedures.

The purpose of adopting such a procedure is to allow the two entities to take steps to avoid any inappropriate entanglements between the Town Officer and the town employees or other officials involved in a transaction. In this case, however, the Committee member has assured the Board of Ethics that there was no prior knowledge and that there has been no involvement between the Town Officers submitting the bid and the persons involved in preparing the specifications for the contract. This indicates that the result intended has been achieved thus far, even though a procedure hasn't been formally adopted. We assume that the Committee members will notify the Chair of the Committee and the Director of the Department of Planning and Zoning promptly, so that steps can be taken to ensure the integrity of the selection process and the administration of the contract if it is awarded to the Committee members' team.

A particular concern of the Board in these situations is that steps be taken to avoid unnecessary contact between persons involved in performing the contract and those supervising it. This is particularly important in the case where the persons involved in performing the contract might, in their position as a Town Officer, be in a supervisory role with respect to the persons who are at the same time responsible for supervising or evaluating them and their performance as contractors.

The Board is confident that, should the Committee member's firm be awarded the contract, appropriate steps will be taken to avoid inappropriate contacts and that if a situation arose where it was impossible to avoid the

concurrency of inconsistent supervisory or evaluative roles, the Committee members would resign their positions rather than violate the Code or default on their contractual obligations.

*Annual Disclosure*

It is also incumbent on the Board to remind the Committee members that they will have an obligation to make reports under Section 5 of the Code should they receive an award of the contract.

**See Related: A83-02, A90-0, A91-02, A01-02, A02-05, A02-10, A09-02**

## **July 2020 – June 2021**

**No Advisory Opinions were requested and two decisions were published in response to complaints made in the 2020-2021 Fiscal Year as follows:**

## Decision No. 21-01

**Date:** 09/15/2020

**Topics:** Substantial Financial Interest, Town Action, Sufficiency of a Complaint

**Code Sections:** Section 4 and Section 5

The Board of Ethics received a report concerning the activities of one of the Selectmen in connection with the actions considered and taken by the Town with regard to refuse removal. Under its Statement of Procedures, the Board proceeded with a confidential investigation to determine if there was probable cause that a violation of the Code had occurred. The Selectman waived confidentiality in connection with the investigation.

The first step in any such investigation is for the Board to determine whether the Board has jurisdiction over the subject matter and the person alleged to have violated the Code. The Board must then evaluate whether the report describes a specific violation of the Code by the Town Officer or Town Officers involved. In performing this preliminary review, the Board considers only the allegations contained in the report and assumes the truth and completeness of these allegations without further investigation. After this evaluation, the Board makes a finding as to whether the submission makes a complaint that should be further investigated or whether the submission should be dismissed because it fails to state a specific violation of the Code over which the Board has appropriate jurisdiction.

## STATEMENT OF FACTS

The report submitted to the Board expressed concern about “the radical change to the Town’s waste removal policies.” It alleged that the respondent had supported a plan that would “require residents to purchase special garbage bags from specific trash disposal companies (Pay as You Throw).” The report indicated that this seemed to be a conflict of interest “since I’ve been told” that the respondent’s family “is in that very same business, and would profit from the plan.” The report concluded that: “Since nobody has asked the question, I’d like to know if such a conflict exists,” and asked if the respondent had filed “the necessary declarations with the legal department.”

Although the report did not contain specifics as to how the respondent had attempted to influence the process, it indicated that it was a complaint under Section 4 of the Code, which prohibits attempting to influence “Town actions” in which a Town Officer has a financial interest. If the Selectman’s family would profit from the Town action, Section 4 of the Code would prohibit attempting to influence the action. Therefore, the Board considered it appropriate to obtain additional information before making a final decision as to whether the report met the requirements for a complaint under the Code of Ethics.

Both the complainant and the respondent agreed to cooperate and to appear before the Board in executive session at its next regular meeting. At the meeting, the complainant was asked to provide any additional information that would show how the respondent or the respondent’s family would “profit from” any of the recent plans that had been considered or implemented by the Town with regard to refuse disposal services. Complainant said that he was not aware of any specific situation, but had heard many rumors. The report had been submitted, complainant said, because the “optics” were not good, since the respondent and respondent’s family had been previously associated with the refuse disposal business and one of the first initiatives that respondent had been associated with as a Town Officer involved that business.

Respondent acknowledged being associated with the refuse hauling business many years ago and indicated that respondent was the last family member associated with the business when the remaining operations were sold in 2002. Respondent had also been involved with a local recycling company until 2011, although employed at that time as a full time teacher. Thus, for many years, neither respondent nor any family member has been involved in the refuse business. Nor have they had any financial interest in any company that would have provided bags under the “pay-as-you-throw” plan. However, respondent was aware that Greenwich is unique among surrounding municipalities in not charging a tipping fee to waste haulers. Whatever the reason, the quantity of refuse generated by the community is high and the question of how to best manage the process and fairly allocate the cost was an issue that the respondent felt was important to address.

Initially, respondent had considered a “pay-as-you-throw” system to have advantages because it would allocate cost based on the quantity of refuse produced at the source and could encourage conservation. Local refuse haulers had not been receptive to the idea, however, because they believed it was unduly cumbersome. In addition, it appeared that there was only one source for the bags necessary to support the system. As a result, the respondent ultimately came to support a system that charged residents an annual fee to use the Town facility and charged a tipping fee to the haulers. This system has been adopted and respondent indicated that it appears to be working well, although some residents have been disappointed with increases in their service fees as a result of haulers passing through the cost of the tipping fee to their customers.

After respondent provided this information, the Board asked the complainant if there was any other information that complainant wished to provide as to a specific violation of the Code by the respondent. Although complainant continued to feel that the “optics did not look good,” complainant agreed that there was no reason why the Board should not dismiss the complaint.



## FINDINGS

The Board has carefully reviewed the complainant's report and made inquiries with both the complainant and respondent regarding the circumstances. Based on this review, the Board has determined that the report should be dismissed, since it does not allege facts supporting the conclusion that a violation of the Code of Ethics has occurred. Accordingly, the report did not qualify as a complaint that should be investigated under the Code.

## Decision No. 21-02

**Date:** 5/11/2021

**Topics:** Complaints-Sufficiency, Board of Assessment Appeals, Financial Interests

**Code Sections:** Section 4, Section 8

### STATEMENT OF FACTS

The Board of Ethics received a report concerning possible violation of the Code of Ethics in connection with a decision made by a member of the Board of Assessment Appeals. The report indicated that the Board member had accepted the task of reviewing an appeal involving the complainant and made a decision with respect to the appeal against the complainant even though the respondent had been recently involved in an arbitration matter with the complainant.

Under its Statement of Procedures, the Board proceeded with a confidential investigation to determine if there was probable cause that a violation of the Code had occurred. The first step in any such investigation is for the Board to evaluate whether the submission alleges a violation of the Code by a Town Officer and whether the Board has jurisdiction over the subject matter and the person alleged to have violated the Code. In performing this review, the Board considers only the allegations contained in the submission and assumes the truth and completeness of these allegations without further investigation. After this evaluation, the Board makes a finding as to whether the report states a complaint that should be further investigated or whether it should be dismissed because it fails to allege a specific violation of the Code over which the Board has appropriate jurisdiction.

The report was received on April 6<sup>th</sup> and a hearing in executive session was scheduled to review the report on May 11th. Prior to the hearing, a member of the Board requested additional information concerning the financial interest of the

respondent in the decision regarding the appeal and the complainant requested to withdraw the report.

### **FINDINGS**

At the hearing, the Board determined that the respondent was a Town Officer within the meaning of the Code. It also determined that the allegations purported to involve a possible violation of Section 4 of the Code of Ethics. However, it determined that the submission did not allege facts supporting the allegation that a violation of the Code existed. The Board made this determination because the report contained no indication that the respondent had a personal financial interest in the decision to deny the appeal of the assessment and the complainant indicated that no such interest was present.

Accordingly, the Board determined to dismiss the report since it did not allege facts sufficient to qualify as a complaint that should be investigated under the Code.

## **July 2021 – June 2022**

**One Advisory Opinion was requested and four decisions were rendered in response to a complaints made in the 2021-2022 Fiscal Year as follows:**

## Advisory Opinion No. 22-01

**Date:** April 6, 2022

**Topics:** Substantial Financial Interest, Transaction, Conflict of Interest; Improper Influence; RTM Committees; RTM Subcommittee; Disclosure of Financial Interests

**Code Sections:** Section 2(2); Section 2(4); Section 4; Section 5

### **Statement of Facts:**

A member (the Member) of the Representative Town Meeting (RTM) has accepted a position as an alternate member on a standing Committee (the Committee) of the RTM that has operational and budgetary oversight over several Town departments. The Member is a former employee of one of these Town departments. The Member has brought a lawsuit against the Town of Greenwich and against current and former Town officials, in their individual capacities. The lawsuit alleges discipline or discharge on account of the exercise of constitutional rights, tortious interference with a contract, and invasion of privacy, and seeks damages in excess of \$15,000, including claims for lost wages and benefits.

As a result of the Member's lawsuit, members of departments for which the Committee has budgetary and operational oversight responsibilities may be called to provide testimony and/or documentation concerning the circumstances of the Member's discipline and dismissal. In addition, the circumstances of the discipline and dismissal may be an issue with respect to the current and future operations of the departments involved and members of other departments. The Board of Estimate and Taxation, and various other committees of the RTM may also be involved in discussions of the Town's strategy in the litigation, including settlement considerations.

The Committee on which the Member serves is designed as the penultimate step in the approval of the Town's budget as it proceeds from the First Selectman's Office, through the BET, and finally to a full RTM vote. The purpose of the

Committee is to gather and review information so as to make a recommendation to the RTM on the soundness of the budgets of various departments of the Town of Greenwich. The Committee is made up of 24 members, comprised of two members (a Delegate and an Alternate) from each of the 12 voting Districts in Greenwich. It has operational and budgetary oversight for 13 departments of the Town of Greenwich including Police, Fire, GEMS, the First Selectman's Office, Human Resources, and the Board of Ethics. In order to perform the substantial work of evaluating 13 department budgets, the Chair of the Committee forms smaller subcommittees (known as Subgroups) assigned to specific departments. Members of the Committee who accept assignments to Subgroups are tasked with attending meetings at the Departments to which they are assigned. At these meetings, the Heads, Chiefs, and Chairs of the departments present their yearly budgets and any current updates to operating procedures and policies. The members of the Subgroup query and review the budget requests and the policy drivers behind any changes to the budgets. Once the members of a Subgroup have completed these meetings, they report back to the Committee as a whole as well as to the Districts they represent and indicate how they will be voting on the budgets. The entire Committee then votes on the budgets and makes its recommendations to the RTM.

The Member has requested an Advisory Opinion.

**Questions Presented:**

1. As a plaintiff in ongoing litigation with the Town, does the Town Officer have a substantial financial interest, within the meaning of Subsection 2(2) of the Code of Ethics, in any action to be taken by the Town or in any transaction with the Town?

2. Since the Committee has operational and budgetary oversight over departments whose officers or employees may be involved in the litigation brought by the Member, is the acceptance of an assignment as an Alternate on the Committee an attempt to use the office of an RTM member to exert influence on a Town action or transaction within the meaning of Section 4 of the Code?

3. Where a Subgroup of the Committee has operational and budgetary oversight over a department whose officers or employees may be involved in the litigation brought by the Member, would the acceptance of an assignment to the Subgroup be an attempt to use the office of an RTM member to exert influence on a Town action or transaction within the meaning of Section 4 of the Code?

4. Does a claim for damages in a lawsuit constitute a substantial financial interest in a transaction with the Town that requires disclosure under 5 of the Code?

**Discussion:**

*Litigation as a Substantial Financial Interest*

The question of whether a person bringing a lawsuit against the Town seeking money damages has a “substantial financial interest” in a Town action or transaction has not been previously addressed by the Board and the existence of any such interest will of course depend on the particulars of the lawsuit and the nature of a Town Officer’s involvement in the lawsuit. Section 2(2) of the Code of Ethics defines a substantial financial interest as follows:

“Substantial Financial Interest shall mean any financial interest, direct or indirect, which is more than nominal and which is not common to the interest of other citizens of the Town.”

Accordingly, a determination that a Town Officer bringing a lawsuit has a substantial financial interest in a Town transaction or action involves an analysis of the dollar amount of the interest, whether it is directly or indirectly held by the Town Officer, and whether it is unique to the Town Officer. In this case, all three criteria are met. The Member’s lawsuit seeks damages that are more than nominal, i.e. in excess of \$15,000. The Member is the plaintiff in the lawsuit and thus has a direct interest in the claim for damages. As a personal claim it is an interest not common to other citizens of the Town.

Arguments may be made that the Member has no current financial interest since the receipt of damages is conditioned upon the future success of the lawsuit in Court and that the lawsuit is not a Town “transaction” or “action” within the meaning of Section 4 of the Code. However, the Code clearly does not require that a contract be entered into for a substantial financial interest to exist. This is evident in that Section 4 prohibits influencing a “transaction” with the Town and Subsection 2(4) includes an “offer” within the definition of “transaction.” Under long established principles of contract law, an offer must be accepted in order for a contract to exist. Thus, as defined in the Code, a transaction clearly includes non-contractual activities.

In Advisory Opinion No. 20-01, for example, the Board considered a bid proposal to the Town for a contract that had not yet been awarded to be an offer and an interest in it to be a substantial financial interest. In this instance, the Member’s lawsuit seeks money damages for services that must be presumed to still be offered. Had the Member quit voluntarily or no longer be willing to provide the service of employment by the Town, there would be no claim for damages for lost employment.

The Member emphasizes that the Member’s employment with the Town has ceased. Indeed, when evaluating the existence of a substantial financial interest, the Board has reviewed many fact patterns involving a Town Officer who receives a salary from the Town, or has a spouse who is an employee of the Town, or who is a party to a contract for services with the Town. However, the Board has also determined that a substantial financial interest exists absent an employment or other goods and services contract with the Town. These include a Town Officer’s management role in a non-profit organization that may lease property from the Town (Advisory Opinion No. 02-03) or a Town Officer’s ownership of property in a district affected by an assessment (Advisory Opinion No. 04-03).

Moreover, the Code prohibits influencing Town “actions” as well as transactions. It is an inevitable consequence that the Member’s lawsuit will prompt numerous actions to be taken by the Town. These actions will include: fact gathering involving persons in the departments over which the Committee has oversight, pretrial



discovery in departments over which the Committee has oversight, the scheduling or giving of depositions, documents or testimony, and legal and practical strategy sessions and settlement discussions involving the Law Department and members of the BET as well as other departments over which the Committee has oversight. At all times, there is of course the possibility of the Town taking action to offer or agree to a settlement and this will require actions to be taken to negotiate a settlement and obtain approvals from the Claims Committee and the RTM.

Accordingly, as a plaintiff in a pending lawsuit seeking damages against the Town, the Board believes that the Member has a substantial financial interest as defined in Section 2(2) of the Code.

*Committee and Subcommittee memberships as an attempt to exert influence.*

Determining that the Member has a substantial financial interest both in a Town transaction and in actions to be taken by the Town is not a determination that the Code has been violated, however. Section 4 of the Code only prohibits certain actions by Town Officers who have such an interest:

“No town officer having a substantial financial interest in any transaction with the town or in any action to be taken by the Town shall use his office to exert his influence or to vote on such transaction or action.”

Accordingly, the Board must consider the ways in which the Member may be seen as exerting influence through the Member’s role as an Alternate on the Committee and a potential member of a Committee Subgroup.

All RTM members are prohibited from exerting influence over any matter over which a member has a substantial financial interest – whether it concerns a general vote or discussion at an RTM meeting or at a committee or subcommittee of the RTM. As stated in Advisory Opinion No. 09-03, “the Code appears to be quite explicit that an RTM member with a substantial financial interest in a matter may not vote on or “exert influence” on the matter either at the larger RTM meetings or at the smaller committee meetings.” This opinion noted, however that there were

special circumstances where an RTM member's obligations in representing constituents might permit discussion of or voting on a matter.

Such special circumstances might occur where the member advocates a position in the interest of constituents that is arguably against the member's own personal interest or where a member votes on an overall Town budget that includes line items that the member has a personal interest in, but took no role in reviewing or discussing. The Board has recognized the fact that the RTM is a large body and that expressions of opinions by a member can be more informative than influential, as long as the member's personal interest had been properly disclosed and considered by those conducting a debate. Accordingly, in Advisory Opinion No. 09-03, the Board outlined safe-harbor procedures under which members could participate, at general meetings of the RTM, in discussions certain matters in which they had an interest without being considered to have used their office to exercise influence. We understand that the member is aware of and expects to follow those guidelines when participating in general meetings of the RTM.

There are special considerations, however, that must be taken into account when it concerns a member's responsibilities on a committee of the RTM. Committee and subcommittee members are more influential than the rest of the RTM because they are called on to make recommendations that the other members rely on when casting their votes. They may also be given privileged access to information and processes as a basis for making those recommendations. With respect to standing committees that have operational and budget oversight responsibility, there is necessarily a process that is influential both in shaping the views of the RTM members that are being reported back to, and also in shaping the behavior of the Town officials and employees that report to the committees and subcommittees.

Two prior Advisory Opinions shed light on the distinctions at issue here. Advisory Opinion No. 07-01 involved a Town Officer who was an employee of the Town as well as a member of the RTM. The Town Officer sat on a committee of the RTM that engaged in extensive discussion and debate on matters relating to the

department for which the Town Officer worked and had also volunteered to serve as liaison between the committee and the board that had oversight responsibility for the department.

The Board expounded on the heightened involvement membership in this committee required as well as the special weight given to committee recommendations and votes as opposed to a general vote as a member of the RTM.

*“While any member of the RTM may testify before a committee, actual participation as a member of the committee is both a privilege and a responsibility that every member does not share. The establishment of a committee recognizes the need for a heightened degree of involvement in the issues that the committee is chartered to deal with, and presumes that the recommendations of the committee will be given special weight by the general membership of the RTM. Thus, the very act of accepting a position on the committee may be seen as placing a member of the RTM in a position to exercise heightened influence over the matters that the committee is responsible for.” (Emphasis added.)*

In Advisory Opinion No. 09-03, a member of the RTM served as an alternate on the RTM’s Budget Overview Committee during the time when the member’s wife was a Town employee. In that case the committee assignment involved reviewing the budget and policy drivers related to the Department employing the member’s wife.

In distinguishing committee work from general RTM responsibilities, the Board wrote:

*“[T]he Board feels that there needs to be a much stricter scrutiny at the committee level than with respect to the RTM as a whole. As there are many fewer members at committee meetings, each vote proportionally is more influential on the result and participating in discussion of matters in which a member has an interest in the committee setting is fraught with potential peril. Committee members*

can influence other members with non-verbal cues, some of which they may not even be aware they are giving. A raised eyebrow, an impatient sigh and many other cues are picked up by other committee members during a discussion and may influence how they vote. In addition, the role of a committee is to forward its findings to the larger RTM. It would be difficult to inform the members of the full RTM of the degree of influence that a particular member who had a financial interest in an issue might have had on the outcome of the committee's votes. As a whole, the RTM has the right to rely on unbiased decision making at the committee level. Therefore, the Board believes that the best way to ensure that members with a financial interest do not exert undue influence on committee deliberations is for such members to refrain both from active debate and voting on issues in which they have an interest at the committee level."

The subtle nature of influence detailed above is particularly applicable to the facts giving rise to this Advisory Opinion. There will inevitably be a chilling effect on Town personnel when they are involved in a lawsuit and know that someone who has interests that may be adverse to the Town or the department they work for is reviewing their action. Regardless of the intent of the person with the interest, others may be influenced simply by knowing that the person is tasked with budgetary and operational oversight.

In considering the current request, the Board has spoken with the Member and the Chair of the Committee. We appreciate that there are a number of departments that the Committee has operational and budget oversight of that appear to be uninvolved in the lawsuit. These would seem numerous enough that the Member could play a productive role in the Committee's activities even while scrupulously avoiding involvement with departments that may be involved in the lawsuit.<sup>1</sup> We

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<sup>1</sup>In a number of past Advisory Opinions, the Board has suggested procedures to avoid a violation of the Code where a member of a board, commission or committee has a financial interest in a matter, but takes no part in matters relating to the action or transaction in which the member has an interest.

also appreciate that the Member has reviewed the Board's prior decisions and appreciates the need to avoid discussions relating to matters in which there may be a financial interest both outside the Committee meetings and by not being present when such matters are discussed in Committee meetings. Accordingly, we cannot find that the mere acceptance of the assignment to serve as an Alternate member of the Committee is an attempt to influence a matter in which the Member has an interest.

The departments involved in the Member's lawsuit will most certainly be called upon to take multiple actions, however, as outlined above. They are likely to be involved in reviews of training, employment, and severance policies, which may also result in budgetary changes. A Subgroup meeting with members of the department involved with the lawsuit may involve reviewing and voting on such changes. Therefore, the Board does not expect the Member to accept a position on any Subgroup charged with operational and budgetary oversight of any departments whose personnel may be involved with or affected by the lawsuit. In this case, the Board believes that the very act of accepting a position may be seen as using the position of being an RTM member to influence matters that the Member has a substantial financial interest in.

#### *Financial Disclosure Reports*

Section 5(1) of the Code requires that, "Any town officer having a substantial financial interest in one or more transactions with the town totaling two hundred dollars or more each in a fiscal year, shall file a written statement disclosing said position..." The Code defines a transaction in Section 2(4) in the following terms:

"Transaction shall mean and include the offer, sale or furnishing of any real or personal property, material, supplies or services by any person, directly or indirectly, as vendor, prime contractor,

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See particularly Advisory Opinion No. 09-04. In addition, the Board has adopted a template for a safe harbor conflict of interest policy. This outlines procedures that could be adapted to fit the Committee's specific needs and that the RTM may find useful in implementing Committee assignments generally.

subcontractor or otherwise, for the use and benefit of the town for a valuable consideration...”

Every lawsuit against the Town is not necessarily a transaction with the Town within the meaning of the Code. However, in this instance the Complaint seeks damages consisting of “lost wages and back pay”, “future lost wages and front pay” and “lost benefits” among other claims. As discussed above, a lawsuit that includes a claim of damages for wrongful termination implies an offer of reinstatement or at least an offer to exchange a payment in lieu of compensation for services that are able to be provided. Accordingly, the Board recommends that the Member file a financial disclosure statement with regard to the litigation in each year during which it is pending.

## **Conclusions**

After careful consideration of the factors involved, the Board finds as follows:

- (a) The Member will have a substantial financial interest in a Town transaction as long as a claim for wrongful termination is maintained because such a claim implicitly involves an offer to accept payment in lieu of compensation for services.
- (b) So long as the claim for wrongful termination is maintained, the Member will have a substantial financial interest in the actions of any Town officer or employee involved in the litigation as a defendant, potential witness, provider of information or manager of any department involved in the circumstances or management of the litigation.
- (c) Notwithstanding having a substantial financial interest in certain committee matters, the Member may serve as an alternate member of a standing RTM committee with operational and budgetary oversight over the departments involved in the litigation without violating the Code of Ethics. However, the Member must take appropriate steps to avoid influencing the litigation as outlined in previous opinions of the Board and its published safe harbor procedures. In making this determination, the Board has been given reason

to believe that there is ample opportunity for the member to contribute to the Committee's work without being involved in the oversight of departments involved with the litigation. If not, the Member's District will want to consider if the assignment is productive.

- (d) Although the Member may accept appointment to the Committee, the Member may not accept an appointment as a member of a Subgroup with specific oversight responsibilities for Departments whose officers or employees may be involved in the lawsuit brought by the Member. The Board believes that acceptance of such a direct oversight role over operations and budgets of the departments involved will necessarily exert influence, intentionally or not, over Town actions in which the Member has a substantial financial interest.

The Board recognizes that final determination of the proper role of the Member on the Committee is a matter for the discretion of the Chair of the Committee, not the Board. With extreme care, it may be possible for the Member to serve on a Committee that oversees a department involved in the litigation without influencing it. However, in the Board's estimation, the Member's service on the Committee is better directed to oversight of departments that are not involved in the Member's lawsuit. Moreover, despite the care that the Member may take in service on a Subgroup the oversees a department involved in the litigation, the Board believes that the mere decision to accept the Subgroup assignment will influence a matter that the member has a substantial financial interest in. Once the Member's lawsuit is resolved, this financial interest will be removed, and the Chair may determine that appointment to such a Subgroup is appropriate, even if the Member's judgements have been influenced by the circumstances of the litigation.

**See Related: AO-20-01; AO-09-04; AO-09-03; AO-07-01; AO-04-03; AO-02-03**

**Decision No. 22-01**

**Decision No. 22-01 has not been published in accordance with the requirements of Section 1-82a (d) of the Connecticut General Statutes**



## Decision No. 22-02

**Date:** 4/6/22

**Topics:** Substantial Financial Interest, Exertion of Influence, Town Action, Complaint

**Code Sections:** Section 2(2), Section 4

The Board of Ethics received a report concerning the actions of a member of a Town Commission. The report was not submitted on the formal complaint form recommended in the Board's Statement of Procedures. However, since the Greenwich Code of Ethics does not prescribe the manner in which a complaint is to be made, the Board proceeded with a confidential review to determine if the report alleged a violation of the Code and, if so, whether there should be a preliminary investigation to determine if there was probable cause that the violation had actually occurred.

The first step in any such investigation is for the Board to evaluate whether the report alleges a violation of the Code by a Town Officer and whether the Board has jurisdiction over the subject matter and the person alleged to have violated the Code. In performing this review, the Board considers only the information contained in the report and, reading the report in the light most favorable to the person making the report, assumes the truth and completeness of this information without further investigation. After this evaluation, the Board makes a finding as to whether (a) the report makes a complaint that should be further investigated, or (b) should be dismissed because it fails to state a specific violation of the Code over which the Board has appropriate jurisdiction or involves issues or circumstances

that are not appropriate to be addressed by the Board in light of the remedies available.

The Board determined that, as a member of a Town Commission, the respondent was a Town Officer within the meaning of the Code and therefore consideration of the report was within the jurisdiction of the Board.

### **Information Contained in the Report**

The report alleged that the Commissioner had, during meetings of the Commission, participated in discussions at which an application concerning the design of a building on property owned by a neighbor of the Commissioner was being discussed. The report included reported statements by the Commissioner that (i) the Commissioner's input was needed because no one else on the Commission had the necessary expertise to review certain areas of the application under review, (ii) the Commissioner had discussed the matter with a member of the Department of Law and had not been advised that recusal was necessary, and (iii) that the Commissioner had not in fact voted on the matter and did not intend to do so. The report also indicated that the Commission had no policy under which it could prevent the Commissioner from participating in the discussion or control the manner in which the Commissioner's information was conveyed so that it could clearly be viewed as an attempt to inform rather than influence the other Commissioners.

### **Determination and Decision**

Under the Board's Statement of Procedures and Rules of Conduct, the report submitted was examined to determine if it described a possible violation of the Code of Ethics with sufficient specificity to enable the Board to conduct a proper investigation and whether it involved issues or circumstances that are appropriate to be addressed by the Board in light of the remedies available.

Section 4 of the Code of Ethics provides that:

"No Town Officer having a substantial financial interest in any transaction with the town or in any action to be taken by the town shall

use his office to exert his influence or to vote on such transaction or action.

In the absence of a showing otherwise, a Town Officer may be presumed to have a financial interest in an application to a Town Commission concerning the design of a building on a neighbor's property. *Section 4 of the Code not only prohibits voting on the matter, it prohibits influencing the matter.* Absent a showing that a Town Officer has formally disclosed an interest in a matter and has followed strict rules established by non-interested members to ensure that information has been provided only to inform, rather than influence the matter, the Board will assume that any participation in the review or discussion of a matter is an attempt to influence the matter, unless further information proves otherwise. Neither the absence of other members' expertise on the Commission nor the lack of a warning by the Department of Law alters this result.

Accordingly, the Board determined that the report met the criteria for a complaint describing a violation of the Code. Prior to this determination, however, the Board learned that the Commissioner had resigned from consideration for reappointment to the Commission, had no further participation in the matter, and was no longer a member of the Commission. In addition, the Commission had adopted a Conflict of Interest Policy using a template recommended by the Board. As a result, the Board determined that the report no longer involved issues or circumstances that are appropriate to be addressed by the Board in light of the remedies available. It was therefore determined that the submission did not qualify as a complaint that should be investigated under the Code.

## Decision No. 22-03

**Date:** 6/8/22

**Topics:** Complaints, Sufficiency, Town Officer

**Code Sections:** Section 8, Subsection 2(3)

The Board of Ethics received a report through a voicemail message on its hotline on May 20th, 2022. The caller was identified as a registered nurse whose mother was a patient at Nathaniel Witherell. In accordance with its Statement of Procedures and Rules of Conduct, the Board proceeded with a review of the report to determine if it alleged a violation of the Greenwich Code of Ethics.

The first step in any such investigation is for the Board to evaluate whether the report alleges a violation of the Code by a Town Officer and whether the Board has jurisdiction over the subject matter and the person alleged to have violated the Code. In performing this review, the Board considers only the information contained in the report and assumes the truth and completeness of this information without further investigation. After this evaluation, the Board makes a finding as to whether the report (a) makes a complaint that should be further investigated or (b) should be dismissed because it fails to state a specific violation of the Code over which the Board has appropriate jurisdiction or involves issues or circumstances that are not appropriate to be addressed by the Board in light of the remedies available.

### Information Contained in the Report

The report alleged that the respondent, who was a member of the staff at Nathaniel Witherell, had publicly posted the results of tests of residents for the Covid-19 virus in manner that allowed them to be personally identified. A concern was expressed that this was a violation of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). A formal acknowledgment of the report was sent to the individual submitting the report, notifying the individual that the report would be reviewed in executive session at the next meeting and encouraging the individual to attend the meeting and/or provide more specific information as to any violation of the Code that may have occurred. The Chair reported that he had also spoken to the person submitting the report, briefly described the provisions of the Code and explained that the Board was authorized only to investigate possible violations of the Code. The caller apologized for being unfamiliar with the Board's responsibilities and agreed that the matter was more appropriate to be reported to other responsible parties.

### **Determination and Decision**

Notwithstanding the acknowledgement of the individual submitting the report, the Board carefully reviewed it to determine if: 1) it described a possible violation of the Code of Ethics with sufficient specificity to enable the Board to conduct a proper investigation and 2) it involved issues or circumstances that are appropriate to be addressed by the Board in light of the remedies available.

The Board determined that, as an employee of a Town owned facility, the respondent was a Town Officer within the meaning of the Code. However, it determined that the report neither alleged facts supporting the conclusion that a violation of the Code existed nor involved issues or circumstances that are appropriate to be addressed by the Board in light of the remedies available. The Board made this determination for the following reasons:

- 1) Section 8 of the Code of Ethics requires the Board of Ethics to investigate possible violations of the Code of Ethics.
- 2) The Board determined that the report was not a complaint that it was required to investigate because the report only alleged a violation of HIPPA rather than violation of the Code.

Accordingly, the Board dismissed the report submitted because it did not qualify as a complaint that should be investigated under the Code.

## Decision No. 22-04

**Date:** 6/8/22

**Topics:** Complaints, Sufficiency, Town Officer

**Code Sections:** Section 8, Subsection 2(3)

The Board of Ethics received a report through a e-mail message on its hotline on May 26<sup>th</sup>, which was supplemented by an amended report submitted June 5<sup>th</sup>, 2022. In accordance with its Statement of Procedures and Rules of Conduct, the Board proceeded with a review of the report to determine if it alleged a violation of the Greenwich Code of Ethics.

The first step in any such investigation is for the Board to evaluate whether the report alleges a violation of the Code by a Town Officer and whether the Board has jurisdiction over the subject matter and the person alleged to have violated the Code. In performing this review, the Board considers only the information contained in the report and assumes the truth and completeness of this information without further investigation. After this evaluation, the Board makes a finding as to whether the report (a) makes a complaint that should be further investigated, (b) should be dismissed because it fails to state a specific violation of the Code over which the Board has appropriate jurisdiction or (c) involves issues or circumstances that are not appropriate to be addressed by the Board in light of the remedies available.

### Information Contained in the Report

The report alleged that an employee of the Town of Greenwich also served as the Chair of a Commission for another Town in Connecticut and, as Chair of that Commission, had recommended the use of consultants “we have used in Greenwich” who “know what [the respondent] wants.” The report complained that this created the appearance of an “illegal conflict” and speculated that respondent might have created a “pay to play ecosystem” and received a *quid pro quo* for the referrals in the form of contributions from the consultants to a non-profit the respondent was a manager of or in the form of “conferences, entertainment, holiday gifts, speaking engagements, etc.”

The Board requested additional information concerning the respondent’s financial interest in specific consultants or in transactions with the Town of Greenwich, or as to gifts to the charity or other items of value that might have influenced the respondent with regard to a transaction or action involving the Town of Greenwich, but was unsuccessful in obtaining such specific information in response to its request.

### **Determination and Decision**

The Board found that, as an employee of the Town, the respondent was a Town Officer within the meaning of the Code. Therefore the Board carefully reviewed the report to determine if: 1) it described a possible violation of the Code of Ethics with sufficient specificity to enable the Board to conduct a proper investigation and 2) it involved issues or circumstances that are appropriate to be addressed by the Board in light of the remedies available.

As a result of its review, the Board determined that the report neither alleged specific facts supporting the conclusion that a violation of the Code existed nor involved issues or circumstances that were appropriate to be addressed by the Board in light of the remedies available. The Board made this determination for the following reasons:

- 1) The report did not allege a possible violation of the Code since it did not describe any specific financial interest in, nor the receipt of any specific thing of value in connection with, a Town transaction or action.



- 2) While Section 8 of the Code requires the Board to investigate alleged violations of the Code by officials of the Town of Greenwich, the Code does not authorize the Board to investigate alleged violations of the standards of other municipalities.

Accordingly, the Board dismissed the report submitted because it did not qualify as a complaint that should be investigated under the Code.

## **July 2022– June 2023**

**The following Decisions and Advisory Opinion were rendered in  
the 2022-2023 Fiscal Year.**

## Advisory Opinion No. 23-01

**Date:** February 8<sup>th</sup>, 2023

**Topics:** Financial Interests, Transactions, Disclosure, Recusal

**Code Sections:** Section 4

### **Statement of Facts:**

The Chair of a Town commission (the “Commission”) requested an advisory opinion with respect to the adoption of a Conflict of Interest Policy by the Commission. The Commission had used the template approved by the Board of Ethics as an initial draft of the policy but had worked with members of the Board to implement changes that members of the Commission felt were more consistent with the operations and character of the Commission.

Modifications to the policy dealt with the scope and applicability of the policy and did not affect the procedure for review of the matter by non-interested members and the making of recommendations concerning proper management of the matter by such non-interested members, which are the fundamental provisions that the policy is based on.

### **Questions Presented:**

1. Does the disclosure of an interest in a Town action or transaction and complete recusal from involvement in discussion or voting on the action transaction avoid a violation of Section 4 of the Code, which prohibits Town Officers from “exerting influence or voting on” a transaction in which a Town Officer has a substantial financial interest?

2. Where a Town Officer is a member or staff of an entity that has adopted a conflict of interest policy discloses an interest in a Town action or transaction, describes the details of such interest and follows the recommendations of independent reviewers of the transaction, will the Town Officer be entitled to safe harbor treatment by the Board of Ethics?

### **Discussion and Conclusion:**

Consistent with the decision of the Connecticut Supreme Court in *Senior v. Zoning Commission*, 146 Conn. 531, 2, 153 A.2d 415 (1959), the Board has on numerous occasions indicated that Town Officers can avoid a violation of the Code of

Ethics where they disclose the existence of an interest in a Town action or transaction, and take appropriate steps to avoid influencing the transaction. The steps the Board has recommended in this regard include disclosure of the existence of the interest, avoiding voting on and discussing the issue with other persons involved in the action or transaction and avoiding continuing involvement in the matter after the approval of the action or transaction is given.

These steps have been articulated in a general sense in various advisory opinions of the Board and in many cases can be implemented without much difficulty in a way that avoids any appearance of impropriety. Therefore, they have been incorporated into the recommended template for a conflict of interest policy adopted by the Board. There are a number of circumstances, however, in which it isn't clear how these guidelines should be applied. Statements made by a Town Officer prior to becoming aware of his or her involvement in the matter may be viewed as an attempt to influence the matter unless the record is clarified. Or Town Officers may become officially involved in a matter for some time before becoming aware of the fact that they have a financial interest in it. The Town Officer may also find that, even if they avoid involvement in the initial approval of an action or transaction, they will have the potential to influence it during the period when it is being implemented. Complete non-involvement in a transaction may also seem impractical when the Town Officer has a duty to represent constituents or provide necessary expertise that is not reasonably available elsewhere.

In these circumstances, obtaining an advisory opinion from the Board of Ethics may not be feasible because of time or other constraints and the need for the Board to educate itself about the relevant operational and other issues involved before it is in the position to render a thoughtful opinion. This is why the Board has taken the position that it will allow a Town Officer to rely on the recommendations of uninterested reviewers in determining how to avoid a violation of the Code. The Board is confident that a Town Officer who reveals the details of their interest in a transaction and is willing to follow the recommendations of uninterested reviewers is not intentionally violating the Code. If a complaint is made in such circumstances, the Board will inquire into whether the interest was properly reported and reviewed and whether the recommendations to implement recusal were properly followed. If it finds that a violation of the Code did occur when these procedures were implemented in good faith, it will not find that the violation was intentional.

Whether or not a conflict of interest policy has been adopted, where an interest is reported and complete recusal is achieved, the Board will not find a violation of the Code by virtue of the successful recusal.

The Commission has adopted a conflict of interest policy that follows the Board's recommended template with respect to review and recommendation procedures following a detailed reporting of the nature of the transaction. Therefore a Commissioner who discloses an interest in a Town action or transaction, describes the details of such interest and follows the recommendations of independent reviewers of the transaction, will be entitled to safe harbor treatment by the Board of Ethics in accordance with this advisory opinion.

**See Related: A09-03, A09-04, A12-01, A14-01, A17-01, A20-01**

## Decision No. 23-01

**Date:** 12/07/2022

**Topics:** Sufficiency of Complaint

**Code Sections:** Sections 4 and 8(a)

The Board of Ethics received a report by email message on its hotline on October 3rd, 2022. The message indicated that a member of the Board of Estimate and Taxation (BET) had posted the name and address of the person making the report, as well as various disparaging comments, on social media in retaliation for having complained about receiving unpleasant messages from the Board member's spouse. There was no indication in the initial report that the BET member had been purporting to act other than in a personal capacity, or that the disagreement with the BET member's spouse involved any Town action. The report did speculate, however, that the BET member might have used Town resources to obtain the address information.

In accordance with its Statement of Procedures and Rules of Conduct, the Board proceeded with a confidential review to determine if the report alleged a violation of the Greenwich Code of Ethics. The first step in any such review is for the Board to evaluate whether the report alleges a violation of the Code by a Town Officer and whether the Board has jurisdiction over the subject matter and the person alleged to have violated the Code. In performing this review, the Board

considers only the information contained in the report and assumes the truth and completeness of this information without further investigation. After this evaluation, the Board makes a finding as to whether the report (a) makes a complaint that should be further investigated or (b) should be dismissed because it fails to state a specific violation of the Code over which the Board has appropriate jurisdiction or involves issues or circumstances that are not appropriate to be addressed by the Board in light of the remedies available.

### **Information Contained in the Report**

The report alleged that a member of a Town board had been upset when the person making the report had complained about receiving “spam emails and texts” from the member’s spouse and that the Town board member had found and “post[ed] my private information on the internet, including my full name, phone number and address.” The message also alleged that the member had made a veiled threat that the person should: “change my address.” The report also complained that the person making the report did not know if the Town position had been used “to gain access to my information” but alleged that “it is in violation of the DOJ rules and regulations and right to privacy laws” and that clearly the member “lacks judgement and is unethical in her dealings with the public. Whether or not she is an elected official, the Town of Greenwich has a fiduciary responsibility for [...] aberrant and illegal actions. Please step up and take responsibility.”

The Chair of the Board responded to the initial message explaining that the Board was responsible to investigate only alleged violations of the Code of Ethics and asked if the person making the report could provide specific information about that. The person making the report was also invited to attend the Board’s next meeting, at which the message would be considered. The person making the report responded by voicemail to the Board’s hotline, explaining that it would be difficult to attend the meeting, but expressing the hope that the “unethical” behavior of the Board member would be addressed, indicating that complaints had been made to

Senator Blumenthal and the DOJ and stating that they agreed that the member should not continue to hold a Town office.

The voicemail message did not respond to the information requested in the Board's earlier message, but ended with an offer to provide any additional information that the Board might need. The Chair acknowledged the voicemail message by email. The Chair summarized the provisions of the Code of Ethics and stressed that, as indicated in the Board's previous message, unless specific information about a violation of the Code of Ethics was provided, the report could not be considered a complaint that the Board was required to investigate. In response the Chair received a request for a copy of the Code in a message that stated "if it allows for conflicts of interest, stalking, and harassment of a private citizen by an elected town official on behalf of a related politician, then no further action is required." The Chair sent a copy of the Code to the person making the report five days prior to the meeting and received no further communication in response.

### **Determination and Decision**

Under the Board's Statement of Procedures and Rules of Conduct, the report submitted by the complainant was examined to determine if: 1) it described a possible violation of the Code of Ethics with sufficient specificity to enable the Board to conduct a proper investigation and 2) it involved issues or circumstances that are appropriate to be addressed by the Board in light of the remedies available.

The Board determined that the respondent was a Town Officer within the meaning of the Code. It also determined that that the report did not allege facts supporting the conclusion that a violation of the Code existed. Although it was noted that the address of the individual making the report was readily available from a variety of public sources, the Board made this determination because nothing in the original report, or any subsequent information provided to the Board, described the use of a Town office to influence any transaction with the Town or action to be taken by the Town in which the Town Officer had a substantial financial interest. Such use and influence is necessary in order for there to be a violation of Section 4 of the Code. Under Section 8 of the Code, the Board of Ethics is only authorized to investigate violations of the Code.



Accordingly, the Board determined that the submission did not qualify as a complaint that should be investigated under the Code.

## Decision No. 23-02

**Date:** 4/12/23

**Topics:** Town Officer, Agent, Vendor, Exerting Influence

**Code Sections:** Section 2(3) and Section 4

A member of the Board of Selectmen forwarded to the Board of Ethics a letter from a Town resident concerning the activities of an individual listed as an “approved” vendor on the Town’s website. Because the letter wasn’t addressed to the Board of Ethics, the Board invited the sender of the letter to meet with the Board and discuss the matter more fully. At the meeting, the sender of the letter reported that the “approved” vendor had retaliated against the resident for terminating the vendor, causing a safety issue for the Town and damage to the resident’s property.

In accordance with its Statement of Procedures and Rules of Conduct, the Board initiated an evaluation to determine if the report alleged a violation of the Greenwich Code of Ethics.

### **Information Contained in the Report**

The resident submitting the report alleged that the person who retaliated for the termination of the contract was the principal owner of a firm that was listed as an “approved” vendor on the Town’s website for the purpose of making certain inspections required under Town regulations. Thus the retaliation could be considered an effort by a Town Officer to exert influence over a Town action relating to the required inspections, which the Town Officer had a financial interest in.

## Determination and Decision

The Code of Ethics requires the Board to investigate reports of violations of the Code. However, Sections 3, 4 and 5 of the Code only provide standards that apply to a person or entity who is a “Town Officer” as defined in the Code. Therefore, in order for the Board to have jurisdiction over an “approved” vendor, it must determine that the vendor is a Town Officer.

Section 2(3) of the Code provides that:

“Town officer” shall mean and include any official, employee, agent, consultant or member, elected or appointed, of any board, department, commission, committee, legislative body or other agency of the town.”

For the Board to determine whether the vendor in question was a Town Officer within the meaning of the Code, it was necessary for the Board to understand what the relationship between the “approved” vendors and the Town was. Since no information was available on the Town website other than a listing of “approved” vendors and an FAQ briefly describing the services that the “approved” vendors could provide, the Board reached out to several additional sources on a confidential basis<sup>2</sup> in order to assist it in making such determination. In addition, the Board reviewed the regulations of the Town relating to the activities in question, which were under the supervision of a recently formed Town commission (the “Commission”).

The Town’s regulations described the required inspections, which had previously been under the sole supervision of a State official. Under the Town’s regulations, the inspections are to be made by “qualified” vendors. The qualifications for these vendors are to be established by a committee consisting of members of the Commission and, *ex officio*, the State official who was previously solely responsible for overseeing the inspections. The committee was also responsible for approving the qualifications of the vendors each year.

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<sup>2</sup> GCS §7-148 and 1-82a (a) and (b) require confidentiality in the preliminary stages of any investigation of a reported violation of the Code.

A vendor on the “approved” list that was not the subject of the reported violation advised the Board that it did not know how it had been placed on the list of “approved” vendors, except for the fact that its inspection reports had always been accepted by the State official. It had no contract with the Town and was not aware of any official set of qualifications or of any requirement to be formally approved each year.

The Chair of the Commission advised the Board that, during the early stages of the Commission’s operations, its limited resources were required to be devoted to a number of other priorities. So the matter of the inspections had been left primarily to the State official. Members of the Commission also confirmed that, although a committee bearing the name of the committee specified in the regulations had been informally set up, it did not have the requisite membership provided for in the regulations, had not met formally or kept records and had not established qualifications for vendors to make the required inspections.

To determine whether the vendors listed as “approved” on the Town website were agents of the Town, the Board considered it necessary to examine the following factors: 1) the extent to which the Town represents that the vendor is acting on behalf of the Town, 2) the nature of the entity’s activities, *e.g.* public safety as opposed to general welfare, 3) the degree to which the services provided by the approved vendor benefit the Town, 4) the nature and degree of oversight effectuated by the Town, and 5) the nature of the arrangement between the entity and the Town, particularly the existence of any contractual arrangements.

In this instance, the Town’s decision to maintain a list of “approved” vendors for a service that relates to the Town’s public safety pointed in favor of finding an agency relationship. However, in its evaluation of the facts, the Board had found that the list of “approved” vendors that appeared on the Commission’s web pages was simply a list of the entities that had previously been approved by the State official to make the inspections.

Under the Town’s regulations, it was also clear that the Town’s role was only to establish and review the qualifications for these vendors, not to engage the vendors themselves. It was the equipment owners who had the responsibility for

hiring the vendors and negotiating the prices. As confirmed by the qualifications that were ultimately adopted by the committee, there was no evidence of any formal or informal contract, arrangement or even intention whereby the vendors would be considered to be acting as Town officials (by being vested with any part of the Town's authority) or as agents of or consultants to the Town. Consequently, the "approved" vendor named in the report the Board received was found not be a Town Officer and the Board determined that the report it had received did not qualify as a complaint that should be investigated under the Code.

Prior to the Board's decision to dismiss the reported violation of the Code as not relating to a Town Officer within the Board's jurisdiction, it was advised by the Chair of the Commission that a committee had been established in accordance with the regulations. The Chair<sup>3</sup> of that committee further advised the Board that an official set of qualifications for vendors had been established by the committee and would be applicable to vendors for the current year. The qualifications state in pertinent part that the vendors:

"...are to be hired by and act solely on behalf of the registered owners... Neither the Town of Greenwich ... or any member or employee thereof shall have any responsibility for their actions or capabilities. Meeting the qualifications ... is not an endorsement or recommendation of the vendor by the Town of Greenwich..."

The report is dismissed for a failure to meet one of the necessary elements of a complaint, namely to allege a violation by a person who the Board has jurisdiction over as a Town Officer. In dismissing this report, the Board recommends that Town departments, boards, commissions, committees and other agencies consider

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<sup>3</sup> During the course of its review, the Board learned that a member of the Commission (who had on some occasions been referred to as the Chair of the ad hoc committee) had an indirect interest in an "approved" vendor. This Commissioner had stepped down for reasons of health and was not appointed to the committee that was formally established. In addition, the Commission had a review performed by un-interested commissioners under its Conflict of Interest Policy. Consistent with the fact that matters relating to vendors had not been a priority for the Commission during that time, the review found no instances where the commissioner voted on or tried to influence matters relating to the vendor in which the indirect financial interest was a factor.

carefully any suggestion made to Town residents that a vendor has been “approved” by the Town. This is especially true when the use of Town facilities or public rights of way or matters of public safety are involved, such that the public might assume that the vendor is exercising Town authority or otherwise acting on behalf of the Town. In this regard, Town entities are respectfully directed to the Board of Ethics’ [Report on Practices and Policies for Referrals and Recommendations](#), dated September 7, 2022.

## Advisory Opinion No. 23-02

**Date:** April 12, 2023

**Topics:** Financial Disclosure Reports, Nominal Interest, Indirect Interest, Aggregation of Interests

**Code Sections:** Sections 2(1), 2(2), 4 and 5

### **Statement of Facts:**

A member of a Town commission requested advice concerning disclosure of possible transactions between the Town and publicly traded companies whose shares were part of the commissioner's investment portfolio. In meetings with members of the Board of Ethics, the commissioner expressed concern that the range of interests that could give rise to a reportable interest under the Greenwich Code of Ethics was broad, while the amount that triggered an obligation to report was small. With an investment portfolio that contained many large public companies, the commissioner was concerned that the Town would inevitably enter into transactions with some of them during the course of any particular fiscal year.

In submitting a written request for an advisory opinion from the Board, the commissioner noted that: "As part of a broad diversified investment portfolio, I am the beneficial owner of shares in many, if not most, of the largest publicly traded corporations. I am sure the Town conducts transactions with many of these same companies." For purposes of rendering this advisory opinion, the Board has assumed that the Town does conduct such transactions (in contracting for the use of software, for example, or acquiring fleets of vehicles) and did not specifically examine a list of the companies in the commissioner's investment portfolio.

In addition to indicating that the portfolio was well diversified, the Commissioner stipulated that:

1. Regardless of the dollar amount of the ownership position, in no case is the percentage ownership of any corporation more than a *de minimis* percentage of that firm's outstanding equity securities.
2. In no case was the prospect of an investee company's business with the Town a part of any investment decision regarding that company.<sup>4</sup>
3. The commissioner is neither an officer, nor a director, nor employee of any investee company.

In addition to personal advice, the Commissioner requested the Advisory Opinion on behalf of other similarly situated Town Officers and noted that the question of whether the ownership of shares in an investment portfolio created a substantial financial interest was also relevant to the prohibitions of the Greenwich Code of Ethics on voting and influencing Town actions and transactions under Section 4 of the Code.

**Questions Presented:**

1. Under what circumstances does an individual have an "interest" in a public company for purposes of Section 2(1) of the Code?
2. Under what circumstances is an interest in a public company that does business with the Town "more than nominal" for purposes of Section 2 (2)?
3. If a person has interests in multiple companies that are involved directly or indirectly in separate transactions with the Town, do the interests need to be considered in the aggregate in determining whether the person has an obligation to file a disclosure statement or is the \$200 threshold applicable to each separate transaction?

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<sup>4</sup> It is noted that the degree of control a Town Officer has over the selection of investments may be a significant factor in determining whether a Town officer intended to influence or vote on a matter in which the Town officer had an interest. For the purpose of providing an opinion with respect to the reporting of financial interests, however, the motivation or degree of control of the Town Officer in selecting investments was not considered relevant.



## Discussion and Conclusion

Section 5 of the Greenwich Code of Ethics provides that:

“Any town officer having a substantial financial interest in one (1) or more transactions with the Town totaling two hundred dollars (\$200) or more each in a fiscal year, shall file a written statement disclosing said position as a town officer, the nature of said interest in each transaction and the total amount received or expected to be received in such year.”

Therefore, in order to determine whether an individual is required to file a disclosure statement with regard to investments in public companies, one must consider: (1) what kind of investments will create a “substantial financial interest” in a public company, (2) whether the public company is engaged in a transaction with the Town, and (3) whether the Town Officer’s resulting interest in that transaction is greater than \$200.

### *Financial Interests in Public Companies*

The Code makes it clear under Section 1(1) that an interest in “any corporation” is considered an “indirect interest” for purposes of the Code. Under Section 2 (2) of the Code:

“Substantial financial interest shall mean any financial interest, direct or indirect, which is more than nominal and which is not common to the interest of other citizens of the Town.”

Consequently, an interest in a corporation will be a “substantial financial interest” as long as it is (a) financial in nature, (b) not common to other citizens of the Town, and (c) more than nominal.

In Decision 78-01, the Board determined that: “An investment in a business creates a financial interest in either the profits or losses of the business and can create a direct or indirect interest in transactions with the Town.”

An investment portfolio represents money employed in pursuit of a share in the profits of a group of businesses. When there are multiple owners of the portfolio, as is common for pension, mutual or other investment funds, each has a share in the performance of the businesses in the group. Thus, as indicated in the

commissioner's request, an individual's investment in the portfolio represents a beneficial ownership<sup>5</sup> interest in any company whose shares are contained in that portfolio. This beneficial ownership gives the investor a financial interest in any gain or loss that may be experienced as a result of a transaction between the Town and any of the companies in the portfolio.

While many Town citizens may be investors in one or another large pension, mutual or other investment fund, the Board is not aware of any investment vehicle that citizens of the Town may be said to have a common interest in generally. Consequently the Board considers interests in diversified investment portfolios to be personal to the investors in the portfolio and not common to other citizens of the Town. To the extent that the portfolio includes a company that is engaged in a transaction with the Town, a person's beneficial ownership of the company through the portfolio will create a substantial financial interest in the transaction if it is more than nominal.

*Determining what is more than nominal*

While a Town Officer may have a financial interest in many public companies through an investment portfolio, for it to be consequential under Section 4<sup>6</sup> or require disclosure under Section 5 of the Code, the financial interest must relate to a specific Town action or transaction with the Town. The interest must also be "more than nominal".

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<sup>5</sup> The Board assumes that beneficial ownership may take the form of direct ownership of a corporation's shares or ownership of warrants, options or derivative securities whose financial performance is related to the performance of the corporation or any of its securities. It may also include direct or indirect ownership of these interests in any subsidiary or parent of the corporation or an interest in a trust fund, investment partnership or similar arrangement that owns any of the above interests. A financial interest may also arise as a result of a security interest in shares or indebtedness of the corporation, fiduciary or management responsibility for the financial performance of the corporation, as an officer, director or divisional leader or a financial interest in the operations of the corporation, such as commission sales or similar arrangement.

<sup>6</sup> As noted in the Commissioner's request, Section 4 of the Code prohibits Town Officers from exerting influence or voting on matters in which they have a "substantial financial interest." Thus, the question of whether a Town Officer has a financial interest in a public company is relevant to both Section 4, which prohibits influencing or voting on actions or transactions, and Section 5, which requires financial disclosure of interests in Town transactions.

By suggesting that the percentage ownership of any public company in the commissioner's portfolio is not more than a *de minimis* percentage of that firm's outstanding equity securities, the commissioner suggests one way in which a financial interest may be nominal. Depending on the circumstances, a number of other factors may also be considered in determining the exact point at which an interest in a Town transaction ceases to be significant enough to be "more than nominal."

One factor is the amount of profit involved in the transaction itself. An action or transaction may be too small in and of itself to produce a profit that would influence the individual involved. A company may, for reasons other than economic advantage, provide goods or services to the Town at a price that is equal or very close to its own cost or may engage in a transaction with the Town that is merely incidental to its operations and not be essential to producing a profit.

Another factor may be the size of the transaction in relation to the company's operations as a whole. As indicated in Decision 78-01 and Advisory Opinion 06-03, a transaction may be too small a part of a company's entire operations to have a material effect on its profitability. So, where the purchase of a dozen vehicles could be seen as a large transaction for the Town, the benefit of that transaction to a manufacturer who sells millions of vehicles a year could be seen as nominal.

In addition, as suggested by the commissioner, an individual's interest in even a fairly large transaction may be nominal if that interest is the result of owning only a very small fraction of its overall shares. When the impact of even a million dollar profit is spread over millions of shareholders, only the holdings of a very large shareholder would be likely to be more than nominal.

In ordinary circumstances, the interplay of these three factors make it extremely unlikely that a large public company will be involved in any action or transaction with the Town that would result in creating an investment interest that was more than nominal. Indeed, the impact of a Town transaction on such companies profits and losses would likely be imperceptible, making the interest in the transaction less than nominal and therefore not a "substantial financial interest" as defined in the Code.

Currently, the operating budget of the Town of Greenwich is somewhat less than \$500 million. Approximately three-quarters of that consists of debt service and employee salaries, benefits and pensions that could safely be assumed not to involve a transaction with a public company. Based on past history, it can also be quite safely assumed that not more than \$15 million (10% of the Town's remaining revenues) would be dedicated to a contract with any single company. By comparison, the revenues of many of the largest publicly traded companies routinely exceed \$100 billion per year. For example, among vendors that might supply large ticket items to the Town, 2022 revenues were over \$513 billion for Amazon (which provides cloud based web services), \$394 billion for Apple (which provides hardware and software services), \$204 billion for Microsoft (which provides software services), \$322 billion for CVS (which provides health care products) and \$158 billion for Ford and \$156 billion for General Motors (which provide vehicles). So even a \$15 million transaction would equal less than 0.01% of the total revenues of any of these companies.

While it would only be a very extraordinary transaction with a large public company that would give rise to a reportable interest (and this type of unusual transaction would likely be well known to Town Officers), the more common transactions that the Town engages in are with local and regional suppliers. Here ownership interests tend to be concentrated among a much smaller group of persons and transactions with the Town can represent a much larger share of the firm's revenues. Owners of these companies are also much more likely to be aware of transactions between their companies and the Town than shareholders in large public companies.

#### *Aggregation of Nominal Interests*

The commissioner has suggested that the investment portfolio of an individual of substantial wealth might include nominal interests in a significant number of large public companies and expressed concern that those interests might be aggregated in such a way that they collectively trigger a reporting requirement. It is true that the Board has considered a pattern or series of interactions under a single contractual arrangement to be a single transaction for purposes of the Code. Where such a

pattern or series exists, whether an interest in the transaction is nominal requires consideration of the entire pattern or series.

A single transaction may also involve a large group of companies, in each of which a particular person may have an interest. In that case, nominal interests in the entire group will need to be aggregated in order to determine whether the overall interest in the transaction is nominal.

But the Code makes it clear that such aggregation is not required in the case of separate transactions with different companies. It only requires reporting when a Town Officer has a “substantial financial interest in one or more transactions with the Town totaling \$200 or more *each* in a fiscal year.” Thus, for purposes of complying with the reporting requirements of Section 5 of the Code, a Town Officer need only be concerned with a more than nominal interest in the particular company or group of companies involved in a particular transaction or related series of transactions. An aggregate interest of more than \$200 resulting from investments in companies involved in unrelated transactions need not be reported if the interest in each of the individual transactions is less than \$200.

**See Related: D78-01, A06-03**

## Decision No. 23-03

**Date:** 4/12/23

**Topics:** Exerting Influence, Indirect Interest, Employee Interest, Confidentiality

**Code Sections:** Section 4

The Board of Ethics received a complaint by mail in care of the Department of Law. The envelope was forwarded unopened to the Chair of the Board and copies were circulated confidentially to each of the members of the Board. The complaint was filed anonymously using the Board's recommended form for filing complaints. The complaint concerned a member of an advisory committee appointed by the 1<sup>st</sup> Selectman. It alleged that the Committee member had participated in discussing and voted on recommendations of the Committee concerning an RFP for Town services that the Committee member's employer had responded to. Under its Statement of Procedures, the Board proceeded with a confidential investigation to determine if there was probable cause that a violation of the Greenwich Code of Ethics had occurred.

The first step in any such investigation is for the Board to evaluate whether the board has jurisdiction over the subject matter and the person alleged to have violated the Code. In performing this review, the Board considers only the allegations contained in the submission and assumes the truth and completeness of these allegations without further investigation. After this evaluation, the Board makes a finding as to whether the submission makes a complaint that should be further investigated or whether the submission should be dismissed because it fails

to state a specific violation of the Code over which the Board has appropriate jurisdiction.

### **Allegations Contained in the Complaint**

The complaint was received on March 30<sup>th</sup>, 2023 and included several exhibits, including the order of the 1<sup>st</sup> Selectman establishing the Committee and describing its deliverables. The deliverables were to make recommendations for the design and planning of a Town facility, craft and support a capital improvement project request, develop a funding plan and act as a community liaison for the capital project. The exhibits also included minutes from an October, 2022 meeting of the Committee at which the only vote taken was to defer recommendations concerning the design of the project until after the results of an opinion survey were available.

Also included among the exhibits were an RFP issued by the Town in September, 2022 and returnable within a month, seeking a vendor to manage the existing Town facility. The vendor was asked to run day-to-day operations, manage staffing and programming and handle building and equipment maintenance. The minutes of the October Committee meeting indicate that the Committee received an “update” that responses on the RFP were due within a week and that several responses were expected. No further discussion or recommendation was indicated in the minutes.

Under Section 2(3) of the Code, a Town Officer is defined to include “any...member, elected or appointed, of any...committee...of the town.” The respondent named in the Complaint was listed in the order establishing the Committee and as a member in the Committee’s minutes. The Chair of the Committee also acknowledged that the individual continued to be a member of the Committee. The Board therefore determined that the respondent was a Town Officer within the meaning of the Code.

Section 4 of the Code of Ethics prohibits Town Officers from using a Town office to “exert...influence or vote on” Town transactions or actions in which they have a substantial financial interest. In Advisory Opinion 83-01, the Board addressed the question of whether an employee of a separate division of a Company

from the one that transacted business with the Town had a financial interest in those transactions:

“Since employees receive salaries, bonuses, pensions, benefits and other forms of compensation from their employers, they have a direct and substantial interest in their employer’s ability to pay their compensation.”

Similarly, in Advisory Opinion 01-02, the Board advised an executive of a non-profit organization that participation in discussions related to a parcel adjacent to land owned by the organization “would be perceived as a conflict” and encouraged refraining from such conversations. Such concerns can be considered even more pertinent with respect to a transaction in which the employer might be expected to receive payment from the Town for services that were being provided directly by the Town Officer in person. Such a transaction could be seen as a subsidy of the employer and perhaps even the Town Officer.

In its initial review of a reported violation of the Code, the Board assumes the truth of the statements made in the report. After careful review in accordance with the Board’s Statement of Procedures and Rules of Conduct, the report submitted by the complainant was determined to describe a possible violation of the Code of Ethics with sufficient specificity to enable the Board to conduct a proper investigation. Since it was alleged that the respondent participated in and voted on a recommendation of the Committee concerning the RFP that the respondent’s employer was bidding on, the complaint was found to allege a possible violation of Section 4 of the Code. It was also found to involve issues or circumstances that are appropriate to be addressed by the Board in light of the remedies available. As a result, the Board conducted a confidential preliminary investigation to determine if there was probable cause to believe that a violation of the Code had occurred. Respondent was notified of the Board’s determination, cooperated with the Board in its investigation and waived the confidentiality provisions of CGS Section 1-82a (d).

### **Results of Investigation**

In the course of its preliminary investigation, the Board reviewed the minutes of the Committee from the date of its inception to the present, as posted on the



Agenda and Minutes pages of the Town website. The minutes revealed that the Committee provided opportunities for public comment that infrequently addressed minor issues with regard to the operation of the Town's existing facility. In addition, the Committee had received briefings from the Department of Parks and Recreation with regard to design alternatives for the new facility, which included discussions of cost implications relating to operations and discussion of the possible impact of the RFP on future costs. The preponderance of the discussions among Committee members, however, had to deal with consideration of various alternative designs for the new facility and the impact of those designs on the community and the site, particularly as it related to traffic and access, use of the adjacent ball field and other safety, environmental and aesthetic issues. Other than the brief update on the RFP at one meeting, there was no evidence that it was further discussed or voted on. In fact, except for addressing a technical issue regarding the name of the park in which the facility is located, all recommendations made by the Committee to date have been related to design and siting issues and operational issues related to the use of temporary facilities in order to accommodate construction. The Chair of the Committee also confirmed that no informal recommendations were made by the Committee concerning the RFP.

The Board also conducted confidential interviews with members of the departments of responsible for the preparation of the RFP and evaluating the proposals received. Although respondent did appear at an interview of prospective bidders that was conducted by the evaluation committee, the Board found no evidence that the respondent participated in any other way in the design or selection process. The director of the department with primary responsibility for preparing the RFP indicated that the respondent played no part in its preparation and the respondent was not a member of the committee that evaluated the proposals submitted. In its interviews with the Town Officers involved, the Board found no evidence that respondent's position as a Town Officer was used to exert any influence on the RFP or selection process in favor of the organization respondent managed.

## **Determination and Decision**

In Advisory Opinion 20-01, the Board addressed the circumstances under which a Town Officer could participate in bidding on a Town contract without violating the Code of Ethics. A Town Officer who was the majority owner of a landscape design firm had requested the opinion in order to be eligible to submit a proposal to develop a master plan for a Town park, with another Town Officer serving as a subcontractor. The opinion was requested in order to satisfy the conditions of Section 1.10 of the Town's Purchasing Ordinance.

The person requesting Advisory Opinion 20-01 stipulated that "I have had no involvement in the preparation of this RFP or any prior knowledge, involvement or activity with the town or anyone regarding this project in my capacity as a volunteer..." and confirmed that "...no member or employee of the firm or any subcontractor has had any contact with the individuals who established the specifications for the contract or with any member of the selection committee that will recommend award of the contract."

In responding to that request, the Board drew on several prior opinions. It noted that, in Advisory Opinion 83-02, the Board advised Town Officers to "avoid discussions with those in Town government involved in the purchasing decision with respect to any product or service that the company employing the Town Officer may be seeking to provide the Town." The Board also noted four other Advisory Opinions where Town Officers were involved transactions with the Town:

"The Board has previously indicated that Town Officers do not need to resign their positions in order to engage in Town transactions as long as appropriate steps are taken to ensure that Town actions and transactions are not influenced by the Town Officer and the Town Officer does not participate in any votes concerning the actions or transactions. See Advisory Opinion 90-01 (member of Tax Review Committee of RTM employed by Housing Authority), Advisory Opinion 98-02 (RTM member serving on Board of local non-profit), Advisory Opinion 01-02, (member of the Inlands, Wetlands and Watercourses Agency involved with non-profit applying for an

approval), Advisory Opinion 02-05 (employee of custom home builder serving on Planning and Zoning Commission). These opinions indicate that the existence of the interest need not require the Town Officer to resign in order to participate in a transaction with the Town. But they also confirm that appropriate procedures should be followed to insulate the Town Officer from the opportunity to influence the transaction.”

In addition to avoiding any discussion with the persons involved in preparation and evaluation of the RFP, other procedures were noted in Advisory Opinion 20-01 as beneficial for protecting the Town Officer from influence. Included in these were early notification of supervisory personnel about the interest in the proposed transaction, notification of all appropriate persons to avoid discussions with the Town Officers about the matter in which the Town Officers had an interest, review of the situation by independent persons, and, in the event the Town Officer were to be awarded the contract, the implementation of protocols to avoid future entanglements, particularly with respect to supervisory personnel.

With regard to the possible award of a contract, Advisory Opinion 20-01 reminded the Town Officers involved of the need to file disclosure statements and of the possibility that they might need to resign their positions if, due to performance issues, the entanglements became problematic:

“The Board is confident that, should the Committee members’ firms be awarded the contract, appropriate steps will be taken to avoid inappropriate contacts and that if a situation arose where it was impossible to avoid the occurrence of inconsistent supervisory or evaluative roles, the Committee members would resign their positions rather than violate the Code or default on their contractual obligations.”

Subsequent to Advisory Opinion 20-01, the Board of Ethics approved a template for a conflict of interest policy for Town entities to adopt (<https://www.greenwichct.gov/DocumentCenter/View/19961/Town-Entity-Conflict-of-Interest-Policy-Template-as-Approved-by-Board-of-Ethics>.) Since the Board’s template articulates procedures that, if followed, allow the Board to find

that no intentional violation of the Code of Ethics will occur, Town Officers certifying that they are following such a policy are permitted to bid on Town contracts with getting an advance opinion from the Board of Ethics. This template has only recently been adopted, however, and the Committee on which the respondent in this case serves is not one of the few Town entities that have adopted such a policy at this time. It was therefore incumbent on the Board to inquire more deeply into the respondent's conduct in this case.

Section 4 of the Code of Ethics prohibits Town Officers from exerting influence on Town actions or transactions in which they have a financial interest. Since the organization managed by the respondent was a bidder on the Town's RFP with respect to the operation and management of a Town facility, the respondent was found to have a financial interest in the RFP. However, the Town Committee that the respondent was a member of was charged only with making recommendations concerning the design and planning of the facility, crafting and supporting a *capital improvement project* request and developing a funding plan and acting as a community liaison for the *capital improvement project*. The Committee was given no responsibility for making recommendations concerning the operation or management of the facility and there is no evidence in the Committee's minutes that it ever made any such recommendation.

The Board is aware that the organization managed by the respondent was represented by the respondent during the interviews conducted by the evaluation committee reviewing the RFP. To require a Town Officer not to participate in such an interview, when they have otherwise scrupulously avoided influencing the RFP, would put both the respondent and the Town at an unfair disadvantage. Where all bidders are given equal opportunity to provide information and answer questions concerning their proposals, the purpose of the interviews is clearly to inform, rather than influence, the evaluation committee's decision, and this purpose is clearly served by having the most responsible individual represent the bidder.

In order for a violation Section 4 of the Code to exist, the Board must see some evidence of an effort by the Town Officer to use their position as a Town Officer to exercise influence or vote on a Town action or transaction. In appearing at the interviews, the respondent was clearly acting as a representative of the bidder,

not as a Town Officer. In serving as a Town Officer on the Committee, the respondent dealt only with recommendations relating to the siting, finance and design of a new facility, not the operation and management of the existing facility. All of the evidence that the Board obtained as a result of its preliminary investigation contradicted the allegation in the complaint that the respondent had participated in discussions concerning the RFP and voted on Committee recommendations that related to the RFP.

Therefore, after having diligently examined the sources available to verify the complaint, the Board concluded that the respondent had not attempted to influence the RFP by participating in discussions or votes of the Committee. Since the complaint was anonymous, there was no means of determining if the complainant could provide further information that would alter this conclusion. Consequently, the Board found no probable cause to believe that a violation of Section 4 had occurred and has determined to dismiss the complaint for lack of probable cause.

Since it may help to avoid unfounded suspicions in the future and will certainly be useful in the event that the organization represented by the respondent is ultimately selected to manage the facility, the Board recommends that the Committee consider adopting a conflict of interest policy using the template approved by the Board.

This decision is limited to the application of the Greenwich Code of Ethics, which the Board has specific responsibility for. Accordingly, it should not be interpreted as an opinion with regard to any other local, state or federal laws, rules or policies that might be applicable to the circumstances that you describe. Town Officers are of course responsible for compliance with such laws, rules or policies as may be applicable to them, including the regulations, policies and standards of the Town of Greenwich.

**See also: A90-01, A98-02, A01-02, A02-05, A20-01**

## **July 2023– June 2024**

**The following Decisions and Advisory Opinion were rendered in  
the 2023-2024 Fiscal Year.**

## Advisory Opinion No. 24-01

**Date:** 12/6/2023

**Topics:** Influence on Performance; Valuable Gift, Thing, Favor, Loan or Promise; Conferences; Soliciting Contributions; Memberships; Reimbursements; Travel; Meals; Common Interests; Entertainments; Events; Incidental Benefit; Exerting Influence; Recusal

**Code Sections:** Section 3, Section 4, Section 5

### **Statement of Facts:**

A Town employee has requested assistance in understanding the requirements of the Code of Ethics as it relates to participation in meetings and conferences sponsored by a non-profit association (the "Association".) The membership of the Association consists of government officials or professionals involved in local government matters. The Association has paid staff and may from time to time engage research organizations, law firms, lobbyists and other entities to further the interests of the their members and/or the municipalities their members serve. The Town pays the membership dues of the employee as a budgeted expense itemized to show that it is a departmental expense for membership fees. As a result, payment of the dues requires specific approval of a supervisor or department head and is a separate expense item from the expenses incurred as a result of the Town's employment contract with the employee.

Membership in the Association provides access to a number of conferences, which is included as a part of the membership at no additional charge. The Association

may also sponsor or arrange for their members to participate in conferences or other vents for a fee and the Town may pay or reimburse the employee for the fee as a separate approved Town expense. At the conferences, some meals are provided without additional charge to all participants as part of the scheduled events. In some cases, the Association also covers the cost of plane tickets, hotels and other related travel expenses for members who attend. This may include the use of a voucher or expense code for parking or use of a car service. The conferences also may include tours of local government agencies where the transportation is arranged for by the Association.

The employee has been elected to the board of directors of the Association, which holds monthly meetings. Two of these monthly meetings are dinner meetings. The Association bears the cost of the dinners and also reimburses the board members for their mileage to attend the monthly board meetings.

In addition to the membership fees paid for by local governments, the Association receives support for its expenses from vendors who may provide goods and services to the Town. In some cases these sponsorships are in the form of associate memberships to the organization. In others they are contributions to sponsor a specific conference in question and in others they are sponsorships to pay for a particular luncheon, dinner or other event at the conference. This may include the distribution of “free” drink coupons to all attendees. Vendors of goods and services to the Town may also directly provide goods and services that are used in connection with the conference or event and may provide promotional gifts (pens, bags, screen cleaners, hats, blankets, etc.) that are distributed free of charge to attendees. They may also provide or contribute toward prizes of significant value that are raffled off or given away at the event.

It is also common for vendors e to sponsor receptions, dinners, entertainments and other activities to which participants who do business with them are invited. They may also schedule meetings at which business issues are discussed in order to take advantage of the opportunity to meet while the parties are together in a convenient location.



## Questions Presented:

1. As an elected board member of an organization such as the Association, is the acceptance by a Town Officer of meals and travel reimbursements considered a valuable gift that might influence the performance or non-performance of official duties?

2. In connection with participation in any conference or event organized by such an organization, would acceptance of any of the following be considered a valuable gift that might influence the performance or non-performance of official duties?

- a. Admission to a conference provided to members without charge, where non-members, including vendors of goods and services to the Town, pay for admission.
  - b. Meals that are provided without additional charge as part of the program of activities.
  - c. Arrangements to receive travel to and from and during the conference or lodging that is paid for by the organization or by sponsors of the event who may be vendors of goods and services to the Town.
  - d. Participation in conference related entertainments and events whose cost is covered by by the organization or by sponsors of the event who may be vendors of goods and services to the Town.
  - e. Participation in receptions, dinners or entertainments provided by invitation only to participants at the conference, where such events are not part of the formal schedule of conference events and the cost is covered by persons who have provided goods and services to the Town or might be expected to do so in the future.
  - f. Modest meals or refreshments provided in conjunction with a business meeting with a Town vendor that coincides with attendance at the conference.
  - g. Acceptance of promotional gifts made available to all attendees by sponsors of the event who may be vendors of goods and services to the Town.
3. Would a Town Officer be considered to have accept a gift of significant value if the Town Officer wins a lottery prize sponsored by a vendor of goods and services to the Town where the winner is selected from among participants at a conference sponsored by such an organization?
4. Would a Town Officer be considered to have solicited or received a thing of significant value if, as an officer of the organization, the Town Officer solicits or arranges for a Town vendor to sponsor an event in connection with an event organized by the organization?

5. May a Town Officer exert influence or vote on a Town transaction that involves membership in an organization or participation in an event that provides them with an incidental benefit?
6. Does a Town Officer have a reportable interest in a transaction where the Town covers or reimburses the cost of the Town Officer's membership in an organization?

**Discussion and Conclusion:**

The issues raised in this advisory opinion are diverse but related to a common set of facts, participation by Town officers in membership organizations and attendance at conferences relating to their Town duties.

Previous Advisory Opinions of the Board have dealt with this issue in the context of for-profit organizations. In Advisory opinion No. 04-02, a Town Officer was offered an expense paid trip to a vendors "Product Preview" in "sunny Palm Desert" during the winter. The Board warned that Town Officers "must be careful to avoid situations where expenses that would normally be considered responsibilities of the Town or the individual are covered by a potential vendor." Similarly, in Advisory opinion No. 06-04, a Town Officer was offered an expenses paid invitation to a conference by a vendor of consulting services. The Board found that the offer created a potential gift or favor and warned that acceptance of the offer would be seen as a violation of the Code if the Town Officer were found to have any involvement in future dealings between the Town and the vendor.

The Board has also dealt with related issues in the context of non-profit organizations. In Advisory Opinion No. 95-01, the Board also dealt with participation at a golf event organized by a charitable organization. The funds raised at the event assisted the Town by reducing the amount that the Town needed to contribute to support the organization's activities, which benefited the Town. In that case, a Town Officer had solicited a Town sub-contractor to contribute by buying tickets that were then used by the Town Officer and several other Town Officers. The Board warned that such participation "could be considered a GIFT OR FAVOR under the Code" and reminded the Town Officers of their responsibility to file disclosure statements.

The employee making the current request has requested that the Board consider memberships and participations in conferences organized by non-profit organizations. Accordingly, this opinion has considered the facts only within the context of non-profit organizations. However, the request also asked the Board to consider the presence of “swag” (i.e. gifts provided by vendors incidental to participation in a conference) or invitation only dinners and entertainments provided by vendors as part of the issues to be considered. Accordingly, Town Officers may find some further guidance in this opinion with respect to participation in conferences and events conducted by for-profit organizations.

*Reimbursements as an Officer of an Organization of Government Officials*

The Town employee requesting this opinion has been elected as an officer of an organization whose members consist of local government officials in Connecticut and has asked whether the acceptance of meal and travel reimbursements in connection with meetings of the officers of the Association could be considered a valuable gift that might influence the performance or non-performance of official duties. The request indicates that the Town pays the employee’s membership fees in the organization as an approved departmental expense. It can therefore be assumed that the employee’s participation in the Association’s activities, including serving as an officer of the organization, is considered to benefit the Town and be part of the employee’s responsibilities.

The Town’s Human Resources Policy Manual permits Town employees to be reimbursed for ordinary and necessary expenses incurred in fulfilling their Town responsibilities. By limiting the expenses to those that are ordinary and necessary, the Town’s policy assures that the expenses will not provide a disproportionate benefit to the individual. Under these circumstances, it should not matter whether the employee receives direct reimbursement from the Town for these expenses or the expenses are covered indirectly in the form of reimbursement by the organization that the Town supports through its payment of membership dues.

It can be assumed that the purpose of the monthly meetings is consistent with the reasons the Town finds it logical to participate in the organization and pay for the membership. It also assumes that the travel and meal expenses related to the

meeting are suitable to the occasion. Where a national organization of local government officials plans a meeting in Washington D.C. and reimburses the participants for necessary transportation, lodging and meals, the dominant purpose of the lodging and meals is to allow the Town Officer to serve the Town by attending the meeting and whatever personal benefit the Town Officer might gain from attending the meeting --the chance to visit an old friend, visit the Smithsonian or take a tour of the White House— is incidental.

In the current situation, we understand the organization is an organization that provides resources and opportunities for mutual assistance among local officials in the State of Connecticut. It can therefore be assumed that the travel expense will be a mileage allowance or ride service coupon for local travel in or near Connecticut and that the meals will provide a suitable a forum for the continued exchange of ideas by the members. It is also expected that the meals will be relatively modest and convenient for the participants as compared to having each of the officials make dining arrangements on their own. It is our opinion that receiving services (or being reimbursed for them) under these circumstances, would not tend to influence the performance or non-performance of the employee's official duties and therefore would violate Section 3 of the Code of Ethics.

One can imagine, however, circumstances where the benefit to the individual is disproportionate, and therefore could tend to influence the performance or non-performance of the employee's official duties. For an organization whose membership consists solely of local Connecticut officials, travel to a distant resort location to attend a routine meeting accompanied by lavish entertainments and recreational activities, would be similar to the circumstances described in Advisory Opinions 04-02 and 06-04. In those opinions, the organizations covering the costs were for-profit organizations, But, as shown in Advisory Opinion 05-01, the fact that an organization is non-profit and public service oriented does not remove the potential for improper influence. Coverage or reimbursement for travel and related expenses in circumstances where the Town Officer is disproportionately benefited could be seen as violating Section 3 of the Code of Ethics. The disproportionate benefit could tend both to give the employee a financial interest in the organization and possibly influencing the employee in the performance of official duties. The

Town officer might be induced to take more than the necessary time away from other duties or even be tempted to influence the Town's action in paying for the employee's membership in the organization itself.

These hypotheticals are admittedly somewhat far-removed from the circumstances that the employee is contemplating in this case. But the employee has requested guidance both for the employee's specific circumstances and for the benefit of other Town Officers who find themselves in similar circumstances. Therefore, the Board feels obliged to mention that there are circumstances in which activities paid for or reimbursed by a membership organization could be viewed as benefitting the employee disproportionately.

It is noted that there are several ways to avoid the appearance of accepting a "valuable gift, thing or favor" under these circumstances. The Town Officer may decline to participate in the activity, or may personally cover the cost and refuse reimbursement for it. The Town Officer may also document that a supervisor, the Town Administrator or Controller or another disinterested senior official of the Town has approved the reimbursement. In addition, the Town Officer is always authorized to request an advisory opinion from the Board of Ethics with regard to the specific circumstances involved.

### *Conference Expenses*

A number of activities that are often associated with conferences have been suggested as possibly involving the acceptance of a valuable "gift, thing or favor" that could be seen as impermissibly tending to influence a Town Officer. Where such items are arranged for and provided by a non-profit organization whose purpose is to serve as a resource for governmental activities, the considerations are the same as those discussed above concerning travel and meal expenses. The touchstone will be consideration of whether the benefit to the Town Officer is disproportionate to the benefit to the Town.

The Board expects both the organization and the Town Officer to have a natural sense of what is appropriate. For purposes of illustration, however, we will address a number of common situations below:

*Admission to a conference provided without cost to members. where non-members, including vendors of goods and services to the Town, have to pay for admission.*

When an organization provides admission to a conference and related activities to its members without charge, but charges a fee to affiliates and other persons, a substantial portion of the cost of the event may be covered by the non-members. Typically, the subsidy inherent in such an arrangement, although benefiting the member, would not be expected to influence them with regard to a Town transaction unless the participation of non-members is exclusively or dominantly by persons associated with a Town vendor.

Several factors play a role here. To begin with, the Town Officer would not be expected to play a role in the decision of vendor representatives to participate in the conference and therefore would feel no obligation to reciprocate. In addition, where there are sufficient number of member and non-member participants the subsidy from any specific vendor is general in nature and thus can't be seen as a gift, favor or thing of value directed to a specific individual.

This calculus may not apply in the case of a member of the organization who plays a role in organizing the activities, however. In this case, as explained in more detail below, the member should avoid any discussion with a current or potential future vendor of goods or services to the Town about their participation in the event.

*Meals that are provided as part of the program of activities.*

Where meals are provided without additional charge to conference participants, a calculation similar to that made in the case of admission fees may be made. Even where the meal is sponsored by a single vendor, if it is modest, suited to the occasion and available to all of a substantial number of participants in the conference, it would not be targeted enough to be a gift to a particular member. Rather, it would be in the nature of the promotional activities that, whether as a matter of advertising or public spirit, businesses engage in as a matter of course and that public officials are expected to be able to put into proper perspective. There is no reason to believe that public

officials are less shrewd about such promotional activities than ordinary citizens of the Town. The Board believes that Town Officers will be able to put these general promotional activities into proper perspective.

Once again, this calculus would change where the Town Officer was personally responsible for arranging or soliciting the sponsorship. In that case it would be best to avoid personal contact with any Town vendor involved.

*Travel and lodging arrangements.*

The acceptance of travel and lodging arrangements raises issues that differ primarily in degree from those just discussed with respect to complimentary admission and meals. Here it may be assumed that the cost may be higher and the value to the individual more significant. Thus the possibility of disproportionate personal benefit is necessary to consider. This would make it more appropriate for the individual to understand clearly what the source of funds to cover the cost is. It would also be important to avoid any significant control a Town vendor might have over the type of travel and lodging used specifically by the individual. Obviously, where a Town vendor is in a position to arrange superior accommodations for a particular Town Officer it would likely be seen as a gift or favor.

For an example, a non-profit may have a reputation for organizing conferences that provide significant insights to municipal entities in how to deal with important health or public safety issues. Aware that travel costs to attend the conference in a particular year exceed the departmental budget of the Town employees who would normally be expected to attend, a public spirited business or individual might offer to cover those travel costs. Where that business or individual is not engaged in transactions with the Town, the gift of travel expenses would not be expected to influence the official actions of the Town employees whose expenses are being covered. But if any of the employees who were expected to benefit from the free travel or lodging are or could be involved in Town transactions with the business or individual paying for the travel or lodging, the tendency for the arrangement to influence the performance of Town duties could exist. Under such circumstances, it would be

prudent for the individual to obtain an Advisory Opinion from the Board of Ethics with regard to the specific circumstances involved.

Where travel and lodging expenses are covered or reimbursed by the organizer of the conference, the considerations are essentially the same as those with respect to admission fees and meals described above. However, to the extent that the cost involved with travel and lodging are higher, Town Officers will want to document a higher level of diligence in determining where the funds the organization is using to cover the expense are from. Many of these organizations are large and well established, are run by professional full-time managers and receive broad support such that none of their contributors could exercise a controlling interest over their activities. In such cases, travel and lodging provided or reimbursed by the organization to a Town Officer who was not an officer or manager of the organization would not create the appearance of a gift that could influence the performance of the Town Officers duties.

By contrast, where the organization receives a large part of its funding from a few influential donors and is managed by volunteers associated with those donors, it is advisable for a Town Officer to document that none of those donors is involved with Town transactions or has a substantial financial interest in an organization that does. If this appears to be the case, it would also be prudent for the individual to obtain an Advisory Opinion from the Board of Ethics with regard to the specific circumstances involved.

*Participation in conference related entertainments and events.*

A similar cause for heightened scrutiny would be a situation where entertainments or other events are part of the program, but not strictly related to the purpose of the conference. Here the lack of clear connection between the activity being paid for and the benefit to the Town can create a cause for concern, particularly if the entertainments or events are sponsored by businesses or individuals who are or may become vendors of goods or services to the Town. It is quite normal for individuals to take advantage of business promotions without feeling any sense of obligation. As a



result, Town Officers shouldn't normally be concerned about participating in such activities.

Where the normal cost of participating in these activities is significant, however, Town Officers should be sure to determine that the sponsors have no existing or expected future dealings with the Town that they might be directly or indirectly involved with. If they are, or might be, involved in such dealings, participation in the entertainments or events could be seen as having a tendency to influence the performance of official duties, since it is not necessary to participate in them to achieve the public benefit associated with the conference itself. Here again, the involvement of a Town Officer in arranging or soliciting sponsorship of such entertainments or other events by existing or potential providers of goods and services to the Town is likely to be considered a violation of Section 3 of the Code.

*Participation in receptions, dinners or entertainments provided by invitation only to participants at the conference, where such events are not part of the formal schedule of conference events and the cost is covered by persons who have provided goods and services to the Town or might be expected to do so in the future.*

An example of conference related activities that could possibly result in a violation of the Code are events conducted or sponsored by vendors that are incidental to the conference activity. Here again, certain aspects of the activities are essential to consider. It is quite normal for a vendor at a conference to sponsor a reception for customers or prospective customers to provide a venue for social and business exchanges that can facilitate introductions, contacts and exchanges of ideas among customers or a better level of understanding between the vendor and its customers. A modest selection of drinks and snacks can be expected to be an ordinary and necessary part of that environment.

While visions of cigar-smoke-filled back rooms, rigged poker games, lewd entertainments and escorts fill the popular imagination, the reality is almost uniformly different. No vendor experienced in dealing with public officials would expect them to do anything but run away from such an event for fear of guilt by association. Town

Officers should be aware of the public perception, but need not be concerned that attendance at an event that involves only the opportunity for civilized conversation will be seen as a violation of the Code of Ethics.

By contrast, an invitation to a private dinner at an expensive restaurant, a professional sporting event, concert, golf outing or similar event should clearly be seen as having the potential to influence the performance of a Town Officer's public duties. While these may provide opportunities for better communication between and among a vendor and its clients, the character of the event is clearly different from that of the conference or a business meeting and the cost is such that, even if the Town Officer places no particular value on it, it could be seen as having the tendency to influence the Town Officer. Therefore, such events should only be participated in when the sponsor has no possible connection to Town business.

*Modest meals or refreshments provided in conjunction with a business meeting with a Town vendor that coincides with attendance at the conference.*

A conference may provide a convenient opportunity for a Town Officer to arrange a business meeting with a vendor of goods and services to the Town. As with any substantive meeting between Town Officers and existing or potential vendors, sandwiches, salads, cookies and similar snacks and light refreshments that are conducive to the conduct of the meeting should not be considered a gift, favor or thing of value for purposes of Section 3 of the Code. In the course of performing Town business, the acceptance from a vendor of a modest meal at or near the site of the workplace is considered ordinary and necessary and is not considered a gift, favor or thing of value likely to influence the performance of a Town Officer's official duties.

*Acceptance of promotional gifts made available to all attendees by sponsors of the event who may be vendors of goods and services to the Town.*

At many conferences, promotional gifts are given out to or available to all attendees. Sometimes referred to as "swag," these gifts are typically nominal in value, such as pencils, pens, notepads, coffee mugs, T-shirts, sunglasses, etc.,

bearing the name and other details concerning the donor. To the extent that the value of these items do not exceed the \$25 per year gift limit established by the Town in its Human Resources Policy Manual, the Board would not consider these gifts to be any more influential than the advertising that members of the public are exposed to on a regular basis.

By contrast, where a high value gift is received in connection with a conference, particularly if it is provided to a limited group of attendees (such as a vendor's customers), caution must be exercised before accepting such a gift. For example, Town Officers would be expected to return bottles of fine wine found waiting for them in their rooms, with a welcome note from a Town vendor, when they checked in to a conference. Where a similar gift was received from a vendor that is not doing business with the Town, the Board would expect the Town officer to enquire whether there was any likelihood of the Town doing future business with the vendor before accepting the gift.

### **Prizes**

Lotteries and sweepstakes that involve valuable prizes are a common method or raising money for charitable causes. In addition to encouraging individuals to part with discretionary income for good causes, they can also be used as way to entice participants to stay longer at an event than they otherwise would or to create a sense of anticipation that adds to the excitement of an event. Similarly, marketers also use prizes (i.e. no ticket purchased) as a way of bringing attention to their products. prizes may be used at a conference for any and all of these purposes.

The value of a prize chosen at random from among the persons attending a conference or a conference event could play a part in considering whether the admission itself could be considered a gift, since the value of the prize discounted by the likelihood of winning it could be considered to be part of the value of admission. In addition, the circumstances of a particular conference may be conducive to the likelihood that a customer of the sponsor is likely to win a prize. If the pool from which the winning prize is selected is heavily populated with Town Officers, the high likelihood that one of them would win could be considered as a thing of value influencing all of them.

Assuming that the process is fairly conducted, however, the fact that a prize is chosen at random from a large group of people does attenuate the possibility that the prize will influence the winner to reciprocate by doing favors to the sponsor of the prize. Consequently, if a Town Officer won a modest cash prize awarded at random from among a large group of conference attendees where only a limited number of the attendees were other Greenwich Town officers, the Board would consider the purpose of a Town vendor in sponsoring the gift as general promotion and would not expect the Town Officer to be influenced unduly by receipt of the prize.

Possible influence could occur, however, even with respect to a fairly conducted lottery or sweepstakes in which Town Officers were only a miniscule portion of the pool the prize was drawn from, a very large prize might have a tendency to create a certain amount of natural affection for the sponsor of the prize. If the sponsor were a Town vendor that the Town Officer had dealings with, those natural feelings of gratitude could be seen as tending to influence the performance of their official duties.

In addition, the prizes offered by some sponsors may involve continuing contact with the sponsor and serve as a vehicle for the sponsor to influence the Town Officer. For example, the prize of an "all-expenses paid" vacation might involve the use of a resort facility owned by the prize sponsor, extensive interactions with the sponsor to make travel and other arrangements and continuing contact with the sponsor which might include the invitation to "let us know if there is anything else that you need."

Accordingly, Town Officers should be cautious in accepting prizes in connection with their participation at conferences. They must be confident that the selection process is fair, the chances of a Town officer winning is remote and the prize is modest and comes with no entangling relationship to a Town vendor.

### **Soliciting Sponsorships and Other Support**

As noted several times above, a Town Officer whose role in a membership organization might involve soliciting or arranging participation in the organization or its events in the form of sponsorships, affiliate memberships or other non-

member participation may find themselves in a different position from Town Officers whose membership is of a more passive nature.

The Board has long recognized that the interests of Town Officers as managers of non-profit organizations are financial interests for purposed of the Code. *See e.g.:* Advisory Opinions Nos: 87-01 (manager of volunteer fire company), 95-01 (trustee of hospital), 96-01 (executive board of GEMS), 02-03 (Selectman as board member of non-profit leasing space from the Town). In this regard, solicitation by a member or officer of a non-profit organization of a vendor or potential vendor to the Town could be problematic if the individual is also a Town Officer. If the vendor agreed to financially support the organization (or a conference organized by it) through paid participations or sponsorships, the benefit to the non-profit organization could be seen as a gift, favor or thing of value that could influence the Town Officer in matters relating to the vendor. It could also be seen as giving a Town Officer a financial interest in the vendor's transactions with the Town, requiring the Town Officer to avoid any discussion concerning, participation in, or vote on, any transactions with the vendor.

### **Selecting Memberships and Members**

As we have seen, it is possible that a management interest in an organization or a benefit received from membership in the organization that is disproportionate to the public interest advanced by the membership could give a Town Officer a financial interest in the organization itself. If more than nominal, this would preclude the Town Officer from using their office to exert influence, or vote on, any transaction between the organization and the Town. This would include the transaction involved in joining or renewing membership in the organization, paying dues for the organization or members of the organization and the selection of individuals to receive such memberships.

It seems likely that the persons most suitable to represent the Town in such organizations are the more senior officials of the Town, who would might normally be expected to have a primary role in developing departmental budgets and assigning personnel to appropriate roles in the department. To the extent that these

officials were to have a role in an organization, or participate in the activities of the organization, in a way that gives them a financial interest in the organization, it is expected that they would defer to others in matters relating to the transactions between the Town and the organization. Arranging for these matters to be handled by other Town administrators that do not share the interest would appear to remove any appearance that the Town's transactions with the organization would be influenced by their financial interest.

### **Disclosure Filings**

Section 5 of the Code of Ethics provides that:

"..each town officer having a substantial interest in one (1) or more transactions with the Town totaling two hundred dollars or more in each fiscal year, shall file a written statement disclosing said position as a Town Officer, the nature of said interest in each transaction and the total amount received or expected to be received from such transaction during such year."

As discussed above in this Opinion, Town Officers may, as part of their official duties, serve as members or officers of, or participate in conferences or other activities conducted by, organizations that exist primarily to benefit the public interest. Notwithstanding the public oriented purpose of these organizations, where a Town Officer as a member of such an organization or a participant in its activities receives a benefit that is disproportionate to the public interest advanced by the membership, it could give the Town Officer a financial interest in the organization. In addition, Town Officers could be considered to have received a gift, favor or other thing of value in connection with sponsorships and other activities provided by other entities in connection with the activities of such an organization. Where such an interest may exist, it would be appropriate for the Town Officer to determine whether transactions exist that would require the filing of a disclosure statement concerning the interest under Section 5 of the Code of Ethics.

It is true that by disclosing a potential financial interest Town Officers also expose the possible existence of an interest in a specific transaction. However, mere disclosure of a possible interest in a transaction does not suggest that a Town Officer has or will violate the Code. Rather, such disclosure signals an awareness of the

potential conflict and an understanding that it is best to allow persons with less potential self-interest to deal with related matters. Since it is impossible to completely avoid potential conflicts, members of the public understand that Town officers who disclose interests are not self-reporting a violation of the Code of Ethics. Rather, it is likely that those who disclose interests are complying with the Code, while those who violate the Code are not likely to file. Should a transaction with the organization arise, the Town Officer may simply avoid voting on or otherwise participating in the Town's consideration and implementation of the transaction. Since it is impossible to completely avoid potential conflicts, public confidence in Town government is strengthened when the disclosure is made and tarnished when a potential conflict is discovered that has not been disclosed.

**See Related: A 95-01, 04-02, A06-04**

## Decision No. 24-01

**Date:** 12/ 06/23

**Topics:** Town Officers, Consultants, Vendors, Town Procurements, Exerting Influence, Standard for Review of Reported Violations, Errors of Fact, Conclusory Statements, Context of Reported Violation, Remedies

**Code Sections:** Section 2(3) and Section 4

The Board received a report concerning activities surrounding the proposed renovation of the Town owned and operated skating rink. A discrete set of allegations in the report was directed at a Town services contractor (the “Contractor”) that describes itself as providing “business consulting and services for sports, recreation, & event center planning, development, and management.” Under a contract proposed by and awarded to the Contractor, it prepared a “community engagement survey” (the “Survey”) for “the Town of Greenwich” consisting of a “web based survey program” conducted from November 7<sup>th</sup> to November 28<sup>th</sup>, 2022. The report on the Survey was dated January 2023.

The Contractor is a subsidiary of a parent company that owns another subsidiary (the “Management Company”) that provides management services for sports facilities. The Management Company submitted a proposal to the Town to manage the Town’s skating facility on October 21<sup>st</sup>, 2022. The report suggested that the Contractor may have violated the Town’s Code of Ethics by providing consulting services relating to the planning of a replacement rink at the same time that a related company was responding to a proposal from the Town seeking a manager for skating rink operations.



In accordance with its Statement of Procedures and Rules of Conduct, the Board evaluated the resident's complaint to determine if the report alleged a violation of the Greenwich Code of Ethics. The first step in any such evaluation is for the Board to determine whether it has jurisdiction over the person alleged to have violated the Code and whether the activities described in the report relate to a violation of the Code. In performing this initial review, the Board considers only the factual allegations contained in the report and generally assumes the truth and completeness of these factual allegations.

### **Information Contained in the Report**

The allegations contained in the report submitted were directed at the parent company of the Contractor and the Management Company. It was alleged that the parent company conducted the Survey about the replacement facility while it was submitting a proposal to manage the existing facility (and presumably any replacement). The report noted that a presentation was made to the 1<sup>st</sup> Selectman's Rink Advisory Committee about the Survey on August 22<sup>nd</sup>, 2022; that the Request for Proposals for the management contract was dated September 12<sup>th</sup>, 2022; that the bid tabulation sheet scoring the bid received was dated October 27<sup>th</sup>, 2022 and that the date on the Survey delivered to the Town was January 23<sup>rd</sup>, 2023. The report stated that the parent company "isn't a Town Officer" but complained that "whoever hired them to do the survey should have taken steps to avoid the conflict of interest."

The information in the report both mistakenly stated that it was the parent company of the Contractor that performed the Survey and responded to the RFP and contained information that clearly identified the independent roles of the two subsidiaries. The report also made the conclusory statement that the parent company "isn't a Town Officer." While the Board initially assumes the truth of the factual allegations contained the report of a possible violation of the Code for purposes of determining whether to proceed with a further review and investigation, it is neither obligated to ignore circumstances that make the factual mistakes obvious, nor to accept erroneous conclusions once they become evident.

The context in which a report is made must necessarily be taken into account by the Board in determining whether it has jurisdiction under the Code to commence an investigation of the matters described in the report. Consequently, the Board has an obligation to make inquiries sufficient to understand what is actually being alleged in order to determine whether it has received a “complaint” of a “violation” that the Code makes the Board responsible to investigate.

The report made in this instance indicated that the Town had engaged a company to conduct a survey for the Town. Conducting such a survey would seem likely to involve a consultative role. As the Code of Ethics defines Town Officers to include consultants to the Town, it was necessary for the Board to understand this relationship in order to determine whether the Contractor was actually serving as a consultant. If the Contractor was not serving as a consultant, the Board would have no jurisdiction over the matter, since the Code only proscribes conduct by Town Officers.

The Board required additional context in order to properly understand another aspect of the report as well. Rather than describing a specific action to influence the RFP process, the report described circumstances where (i) the process of conducting the Survey appeared to be closely related in time to the process of responding to the RFP and (ii) the Survey and the RFP appeared to be closely related in subject matter. Consequently, it was necessary for the Board to better understand the context of both the relationship created by the Town’s contract for the Survey and the relationship between the Survey and the RFP in order to determine whether it had jurisdiction over the matter. This required a thorough understanding of the Town’s objectives in connection with both the survey contract and the proposed management contract.

## **Background**

Greenwich’s Town operated skating rink was built as an outdoor rink in 1971. The facility was converted to an indoor facility and designated the “Dorothy Hamill

Skating Rink” in 1976. Dorothy Hamill was an American figure skater who grew up in Riverside and won the women’s Olympic and World championships in 1976. During her teen years she was forced to commute to New York City for training due to the lack of indoor facilities in Greenwich. As a result, the rink is seen as symbol of a historical event that unified and inspired the Town, as well as an important component of its athletic facilities.

Several nearby cities own and operate indoor skating rinks. Terry Conners Ice Rink in Cove Island Park is owned and operated by the City of Stamford. The Ebersole Ice Rink is owned and operated by the City of White Plains. The Ralph Walker Rink is owned and operated by the City of New Haven. Wonderland on Ice is also owned and operated by the City of Bridgeport. But the Hamill Skating Rink is one of the few town-owned indoor facilities in the area. Only the towns of East Haven (Patsy Di Lungo Veterans Memorial Ice Rink) and West Hartford (Veterans Memorial Skating Rink) support indoor skating on a municipal level.

There are, however, many privately owned skating facilities in the area. Arenas that are privately owned operate in Branford, Brewster (NY), Bridgeport, Cromwell, Danbury, Enfield, Elmsford (NY), Fairfield, Hamden, Larchmont (NY), Newington, Norwich, Simsbury, South Norwalk and South Windsor, providing instruction and hosting various leagues as well as professional and semi-professional hockey teams. The Watertown Skating Club is a private club that uses the Taft School hockey facilities. In addition, the University of Connecticut in Storrs makes its facilities available to the public for recreational skating.

### *The Facility*

The Dorothy Hamill Skating Rink is on Sue Merz Way in Byram on a site, in the 13.4 acre Eugene Morlot Memorial Park, that is owned by the Town and bordered by Western Jr. Highway. Currently the Park is also occupied by the Strazza Field baseball diamond, a parking lot, a playscape, swing set, the Byram Veterans’ Memorial Tree Grove, a wooded area and a grassy hillside. The rink serves a variety of users each year:

figure skaters, recreational skaters, youth hockey groups for boys and girls, and men's and women's hockey teams from Greenwich High School. And after more than forty years of heavy use, a number of issues relating to the condition of the indoor structure have become evident. As a result, the Parks Department established a committee to work toward the reconstruction of the facility by the 2021-2022 Fiscal Year. The Committee included members of the Department's staff, representatives of various user groups and a BET liaison person.

In September of 2019, the Town received the results of an evaluation it had commissioned from a team of architects, engineers and ice rink event specialists who worked with the reconstruction committee to evaluate the needs and costs of reconstruction. A number of fundamental and critical issues were identified, notably substandard ice size and inadequate, aging, and non-code-compliant locker rooms, equipment, building systems and fixtures. Essential health and safety improvements were needed to bring the building up to current building and energy codes and ADA standards, which were estimated to cost over \$4 million. In addition, the study identified \$12 million of essential improvements that were critically needed for the Town's skating programs to operate properly within the existing structure. Since the existing ice slab was not regulation size, a new building was recommended which was estimated to cost between \$29 and \$32 million depending on the choice of certain preferred and secondary options. These options could be accommodated within the existing structure, but would require the closure of the building for at least one season, however, and increase the cost by \$4-7 million.

Based on the evaluation study, the Town began plans to build a new, high quality single-rink facility in the location currently occupied by the Strazza Field baseball diamond adjacent to the existing rink. The proposed plan was to construct a new rink of approximately 40,500 square feet with a gable roof centered over the ice. The plan also envisioned construction of a new Strazza Field on the footprint of today's rink. The improved Strazza field was to be properly sized and oriented. Also under consideration was a new two-lane driveway from Western Jr. Highway directly into the

existing parking lot, which would be expected to provide improvements in public access and traffic safety.

In the approved budgets for fiscal years 2020, 2021 and 2022, the Representative Town Meeting and Board of Estimate and Taxation voted to provide funds to retain architects to develop preliminary plans for the new rink and park infrastructure. After a competitive selection process, architects were chosen to design the new facility.

In May of 2021, the architects presented the results of initial work surveying the site and evaluating traffic and parking options for the new facility. These indicated that replacement of the existing facility as planned would require several years and would require the closure of the facility, as well as the adjacent ball field, for some time. A number of options for the siting and arrangement of the skating, ball park and parking facilities were suggested.

In December of 2021, the Town made an initial proposal for the project to the Planning and Zoning Commission. With costs and interruptions in service increasing due to code compliance and other critical needs that had been identified, a number of concerns about the project were raised by members of the adjoining community and by various Town skating groups in connection with the Commission's consideration of the proposal. The Town considered that it was necessary to consider these issues carefully.

#### *Needs Assessment and Community Involvement*

In response to the concerns raised during the Planning & Zoning Commission process, the Town determined to obtain additional information about the expected use of the new facility as well as community expectations and support for the facility. In February of 2022, the Building Construction and Maintenance Division of the Town, with the approval of the Town Administrator, recommended commissioning a community survey by the Contractor to better assess "what is expected for the location and interior of the new rink." The Division recommended using the Contractor because it had recently prepared a similar survey in connection with the planning for the Eastern Greenwich Civic Center. This had provided constructive assistance in that

project and it was expected that the Contractor's "prior experience working with the Departments of Public Works and Parks and Recreation will allow them to swiftly proceed with the development of the survey and its execution." On March 7<sup>th</sup>, the Contractor provided a scope of services and price quote to the Town, which was incorporated into a Personal Service Contract (the "Survey Contract") between the Town and the Contractor that was entered into on March 30<sup>th</sup>, 2022.

The Survey Contract initially provided for services to be completed by October 31<sup>st</sup>, 2022, but was extended to January 31<sup>st</sup>, 2023. The terms of the contract specifically provided that the Contractor was not to be considered an employee or agent of the Town of Greenwich, but did not address the question of whether the Contractor would be a consultant or a Town Officer subject to the Town's Code of Ethics.

On March 2<sup>nd</sup>, 2022, the Contractor was hired to conduct a survey to "quantify the likelihood of market segments using parks and recreation facilities and to decipher community needs/desires for future enhancements/development." The Survey was conducted using a web based questionnaire distributed through affiliate groups and social media. The Survey collected responses in the following areas: 1) past facility use, 2) perceptions of existing facilities, 3) likelihood of using existing facilities, 4) reasons for not using current facilities, 5) facility amenity requirements and/or preferences 6) perceptions of other recreation facilities, 7) pricing and user fee perceptions 8) desired programs and community function.

The award letter indicates that the Contractor proposed the specifications for the Survey and the \$42,500 cost of the Survey, which was accepted by the Town. The scope of work is described in the contract as a "community engagement survey" as described in the Building Construction and Maintenance Division's memorandum describing the need for the engagement. This memorandum described the need for "a community survey of what is expected for the location and the interior attributes of a new rink."

In June of 2022, the 1<sup>st</sup> Selectman appointed a Rink User Committee for Design and Planning to make recommendations for the design and planning of the new rink. The Committee was also charged with crafting and supporting a capital improvement project request, developing a funding plan and acting as a community liaison for the capital project. The Committee has held several public meetings, including a meeting in August of 2022 at which the Contractor briefed the Committee on the plans for the Survey. The Survey was conducted in November of 2022 and the results were published in January of 2023. In October, the Committee deferred making recommendations concerning the plans for the new facility in order to wait for the results of the Survey report.

#### *Consideration of Management Changes*

As the Town was making plans for the renovation or replacement of the existing facility, the Parks Department also determined to consider the possibility of arranging for outside management of its skating operations. A request for proposals for outside management of the rink's operations (the "RFP") was issued on September 12<sup>th</sup>, 2022<sup>7</sup>, with proposals due by 11:00 AM on October 12<sup>th</sup>. The RFP required that any alternative bid should be identified as such. Unless accepted within ninety days of the bid opening, proposals were deemed to be rejected under the terms of the RFP.

The RFP stated that the Town was seeking a vendor, "ideally a non-profit community organization, to assume operations of the Town's skating rink." The vendor was asked to "run day-to-day operations, manage all programming and staffing and handle building and equipment maintenance." A section of the RFP entitled "Scope of Services" detailed the specific services the vendor was expected to supply. The vendor was expected to provide all staffing, supplies and equipment necessary to operate the rink "in a manner that satisfies the needs of the community." Specifically, this called for 50 hours of cost free access for the Town's Learn to Skate Program, and a minimum of 415 hours of public skating and 220 hours of skating time for the hockey teams at

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<sup>7</sup> No addendum was subsequently issued with respect to the RFP.

Greenwich's public schools. Although fees for public skating and school hockey use were to be "determined by the Board of Selectmen" and hours approved by the Parks Department, the vendor was permitted to keep the revenue collected.

The vendor was also encouraged to expand the available use of the facility and consider providing services for differently-abled persons, as well as including proposals for "concession services, skate shops and more." The vendor would be fully responsible for all maintenance, repairs and replacements needed for the proper operation of the building.

In addition to responsibility for the operation and maintenance of the existing building, the RFP indicated that, "ideally," the vendor would "supply any necessary funds for capital investment." It identified three possible arrangements that involved long term leases with differing arrangements for cost sharing and construction management responsibility and encouraged bidder to suggest alternative arrangements.

Evaluation criteria called for scoring the proposals based on four factors of equal weight: experience and technical competence, recent experience with similar operations, proposed approach to accomplish the goal of the RFP and value to the Town.

In response to the RFP, the Town received four proposals, including one from the Management Company, which as described above is an affiliate of the Contractor. Two of the proposals, including the proposal by the Management Company, elected not to address the issue of capital costs, and provided only for a monthly management fee. Neither of the other two proposals specifically provided for a management fee. One proposed to lease the site from the Town for 50 years (with a provision for a 50-year extension) and suggested that the bidder would undertake up to \$2 million of improvements for the facility. It reserved the right to set prices and times, although it agreed to observe the minimum public skate time and school hockey hours. It would run its own learn-to-skate program and offer a discount to Town residents.



The remaining bid was the only bid submitted by a local non-profit. It did not specify a price for management or a specific alternative for capital improvements, listing the price “TBD” and providing letters of support from other community groups indicating that they could provide financial support for capital improvements in exchange for guarantees of ice time.

The responses to the RFP were reviewed by an evaluation committee consisting of eight Town officials, including representatives of the Department of Parks and Recreation, the Town Administrator and liaisons from the RTM and BET. The Management Company received the lowest average score among the four firms that submitted bids and was not scheduled for a follow up interview. The other bid that simply proposed to manage the facility for a monthly fee was ranked second lowest.

The two bids that were selected as finalists and interviewed by the evaluation committee were the bid that proposed a 50 year lease arrangement and the bid by the non-profit that provided for fees and capital contributions “TBD.” Following the interviews, however, no decision with respect to the RFP was made prior to the 90 day deadline. Therefore, by the terms of the RFP, the Town has been deemed to have rejected all bids.

### *The Survey Report*

The report itself describes the nature of the work being performed including the procedure for conducting the Survey and “analysis” and “summaries” of the results. In addition to merely providing Survey results, the report provides analysis of demographic and socioeconomic factors, projections from sports industry associations with regard to sports participation in the area, the results of research into the availability, accessibility and capabilities of other ice skating facilities in the area and their ability to serve the surrounding population.

Thus the report includes “findings and insights” that place the responses to the survey in the context of demographic and socioeconomic factors. It states that its recommendations are based on “analysis” of factors such as “likelihood of use” and

“user perceptions of pricing and user fees”. It concludes its executive summary with the following recommendations:

Based on the results of the study, [Contractor] believes that there is an opportunity and positive community support for the redevelopment of the Dorothy Hamill Skating Rink within Morlot Park. [Contractor] recommends that the Town further explore any legal, environmental, or other constraints to reconfigure the park and coordinate the use of the existing Dorothy Hamill Skating Rink with limited closure of the ballfield during construction.

Thus, the report describes the Contractor as performing analytical and research functions and concludes by making specific recommendations to the Town. This is consistent with its promotional materials which describe the company as “a team of entrepreneurs and business consultants.”

## **Issues**

The Board addressed the following issues in evaluating the report:

1. Was the Contractor a Town Officer as defined in Section 2 (c) of the Code of Ethics during the period when a related company’s proposal was submitted to and reviewed by the Town?
2. Does the recital of a mistaken fact or incorrect conclusion as to the application of the Code require a reported violation of the Code of Ethics to be dismissed?
3. Did the report the Board received describe a complaint that the Board is required to investigate under Section 8(a) of the Code of Ethics?

## **Discussion and Conclusions**

### ***Contractor as a Town Officer***

The Code of Ethics establishes ethical standards for Town government in Sections 3, 4 and 5 of the Code. Since these standards apply only to Town Officers, the person responsible for the reported activity must be determined to be a Town Officer in order for a violation of the Code to exist.

Section 2 (c) of the Code of Ethics defines a Town Officer to include:

“...any official, employee, agent, consultant or member, elected or appointed, of any board, department, commission, committee, legislative body or other agency of the town.”

As a private company organized in another state, the Contractor would not be able to serve as an official or employee of the Town, nor would it be eligible to serve as a member of any department, board, commission, committee, legislative body or other agency of the Town. In addition, Section 17 of the Town’s contract with respect to the Survey includes the following language:

“Nothing herein contained shall be construed as creating the relationship of an employer and employee or principal and agent between the Town... and Contractor.”

This provision does not, however, exclude a consulting relationship.

The Town’s agreement with the contractor is captioned as a “Personal Services Contract.” A review of the various state statutes and court decisions relating to personal services contractors and consultants suggests that a consulting arrangement can generally be considered a personal services contract.<sup>8</sup> In this case, the Contractor can be considered to provide the services of “specialists” who provide planning assistance, which would appear to fall within the definition of personal services contract for Connecticut state agencies under Section 4e-1 of the Connecticut General Statutes.<sup>9</sup> This

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<sup>8</sup> Section 4-212(2) of the Connecticut General Statutes, which is applicable to contracting by State agencies, defines a personal service contractor as “any person, firm or corporation...hired by a state agency for a fee to provide services to the agency.” By specifically excluding certain particular consulting contracts from the definition, Section 4-212(2) suggests that other consultants are personal service contractors.

<sup>9</sup> Section 4e-1 of the Connecticut General Statutes, which is applicable to State contracting, defines a “Consultant” to mean:

“(A) any architect, professional engineer, landscape architect, land surveyor, accountant, interior designer, environmental professional or construction administrator, who is registered or licensed to practice such person’s profession in accordance with the applicable provisions of the general statutes, (B) any planner or any environmental, management or financial specialist, or (C) any person who performs professional work in areas including, but not limited to, educational services, medical services, information technology and real estate appraisal.”

is also consistent with typical dictionary definitions of the term consultant, which describe a person who gives advice in an area of specialization.<sup>10</sup>

Contractor advertises its services as including consulting services related to the specialized area of sports facilities, and the report delivered to the Town by the Contractor in connection with the Survey provides advice about how the results of the Survey should be interpreted. It also provides other assessments that go beyond the mechanical task of tabulating results. For example, the report provides information about other facilities in the area and demographics related to demand for facility. The report also includes an overall recommendation that there is community support for redevelopment of the skating rink.

The services of the Contractor in designing the Survey, fashioning the questions asked and the methodology for getting members of the public to respond to the questions would alone appear to be consultative in nature. That the Contractor undertook to provide additional background information and recommendations confirms that it understood its role to be consultative in nature. Consequently the Board determined that the Contractor was engaged by the Town as a consultant and was therefore covered by the Code of Ethics as a Town Officer during the term of the contract.

The Board has been advised that the Contractor wasn't made aware of the fact that it was covered by the Code of Ethics. This wouldn't be a factor in determining whether a violation of the Code occurred, however, as it would only bear on whether the violation was intentional. In order to clarify matters in future, the Board recommended to the Department of Purchasing and Administrative Services and the Department of Law that in the future the form of the Town's consulting contracts be revised to put consultants on notice that they are subject to the Code of Ethics. A notification that Town consultants are Town Officers prohibited from influencing Town

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<sup>10</sup> Wikipedia defines a consultant as "a professional who provides *advice* and *other purposeful activities* in an *area of specialization*."

transactions in which they have an interest will also be included in the bidding specifications for all Town contracts. The Board has been advised that these arrangements have been implemented.

### ***Effect of Mistakes of Fact and Erroneous Conclusions***

The report the Board received states the opinion that the Contractor “isn’t a Town Officer” and mistakenly identifies the Contractor as its parent company. As explained above, the Board has determined that the Contractor was in fact a Town Officer at the time of the events in question. In addition, the documentation contained in the report makes it clear that it was the Contractor, not its parent company, that was hired to conduct the Survey, analyze and summarize the results and make recommendations concerning the need and public support of the facility.

In its initial review of any report of a possible violation of the Code of Ethics, the Board reviews it in the light most favorable to the person(s) making the report. In so doing, the Board initially assumes the truth of the factual allegations contained in the report. Conclusory statements that are unsupported by factual allegations are not considered a sufficient basis to consider a report a complaint that should be investigated by the Board, however. So, for example, the conclusory allegation that “Ms. Jones violated the Code of Ethics in January of 2022” would not be considered a complaint unless it was accompanied by specific factual allegations that described receipt of a gift tied to the performance or non-performance of official duties or an attempt to influence a Town transaction in which Ms. Jones had a financial interest.

Similarly, the existence of a factual error in a report cannot be the basis for dismissing a complaint if it otherwise includes facts sufficient to indicate that a possible violation of the Code has occurred. In this regard, the report the Board received concerning the Contractor contained additional allegations and documentation that could not be ignored in determining whether Contractor was in actual fact a Town Officer. Therefore, the statement in the report that Contractor’s parent was conducting a survey is not a fatal error. Not only was the parent also a related party to the company responding to the RFP, but the report included a copy of the first page of the completed

report, which clearly identifies the Contractor and describes the nature of the work being performed. These aspects of the report could not be ignored simply because another part of the report was in error in stating that the parent company, rather than its subsidiary, had performed the Survey.

When an error of fact in a report isn't obvious, and supports the conclusion that a violation of the Code may have occurred, the Board will presumably uncover the error during the course of its confidential preliminary investigation, even if it assumes the truth of the matter for purposes of commencing the investigation. Indeed, this is what the preliminary investigation is for. On the other hand, if the Board dismisses a report because it is unaware that a statement in the report is erroneous, the complainant is free to correct the error and submit a revised report correcting the error after it reads the Board's decision explaining why the report was dismissed.

The Board cannot assume, however, that a clearly erroneous statement of fact is true and use that assumption as the basis for dismissing a complaint. Here the materials attached to the report clearly show the true identity of the person contracted to perform the study. They also identified the report that described the Survey and the information and recommendations that were made as a result of the Survey. These indicated that the contract could be considered a consulting contract. Had the Board ignored these facts, it would not have discharged its responsibilities under the Code. In reviewing a report containing contradictory information and suspect conclusions, it cannot choose to assume the truth of clearly erroneous allegations of fact or the soundness of clearly erroneous conclusory statements and ignore what is more obviously correct.

***Did the Report Describe a Violation of the Code?***

The Survey report contains a recommendation that "there is an opportunity and positive community support for the redevelopment of the Dorothy Hamill Skating Rink." Its findings also include comments about the "need for restaurant/concessions at the rink (current and future)" and "expanding programming." However, the report contained no recommendations concerning a need for outside management. Moreover, unlike the submissions of the two finalists in the RFP process, the submission made by

the Contractor's sister company did not contain any proposals concerning capital improvements for the existing facility. And the public record is clear that the sister company's bid received the lowest score from the evaluation committee.

The detailed report concerning a possible violation of the Code of Ethics by the contractor must be taken in the context of all the information it contains as well as the readily available public record. Accordingly, the Board has determined that there is no allegation in the report or indication in the public record that suggests that the Contractor might have used its position as a Town Officer to influence a decision in which it or a related company had a financial interest.

### **Determination and Decision**

The Board found sufficient information in the report it received about the Contractor to suggest that the Contractor was acting consultant to the Town. It therefore determined that the Contractor was acting as a Town Officer for purposes of the Code of Ethics during the period that proposals were solicited and reviewed concerning the management of the Town skating rink. But the Board did not find any information, either in the report that was made or in the transparent and detailed public record that the Town maintained about the bidding process, that suggests that the Contractor exercised any influence on the bidding process. Contractor has completed its assignment and is no longer serving as a consultant subject to the Code of Ethics. The Town did not accept any of the proposals submitted in response to its Request for Proposals, which by the terms of the Request has resulted in a rejection of all bids. In addition, Contractor's sister company received the lowest scores from the evaluation committee reviewing the proposals the Town received with respect to the management of the skating rink.

The Board has already recommended to the Department of Administrative Services and the Department of Law that language be added to the Town's documentation soliciting proposals for Town contracts and to the Town's contracts for consulting services and has been advised that this recommendation has been implemented. This language will alert future bidders and contractors to the fact that

Town consultants are subject to the Code of Ethics. Accordingly, the Board has determined to dismiss the report as to the Contractor. The report concerning the Contractor is therefore dismissed for failing to describe a violation of the Code of Ethics and because, in the absence of any need for further remedies, it does not involve issues or circumstances that need to be addressed by the Board.

**See related: D22-03**



## Decision No. 24-02

**Date:** 12/6/23

**Topics:** Sufficiency of Complaint, Town Action

**Code Sections:** Section 3

The Board of Ethics received a report by email message on its hotline on November 1, 2023. The report was submitted by an individual who is not a resident of the Town, but identifies as a property owner. In previous communications to the Board, as a descendant of one of the original European settlers of Greenwich during the colonial period, this individual has expressed a sense of responsibility to protect the “little people” of Greenwich from the undue influence of the monied elite and has for many years enlisted the aid of the Board and various other Town officials in addressing various perceived misdeeds.

In October of 2016, after reviewing numerous emails containing comments about unethical or corrupt practices that lacked any specific details relating to a violation of the Code of Ethics, the Board arranged for a meeting with this individual. During the meeting the Board carefully described the provisions of the Code of Ethics and inquired whether the individual was aware of any specific violation of these provisions. As none was mentioned, the Board then advised the individual that it would no longer consider itself responsible to review reports from the individual that were not on the official complaint form provided by the Board. It also suggested that legal counsel or other assistance be obtained in order to make sure that the form submitted clearly identified the provisions of the Code of Ethics that had been violated, together with facts that allow the Board to determine how and when the provisions of the Code were violated, and by which Town Officer(s).

The individual's November 1<sup>st</sup> report provided certain information on the official form, and included several attachments: (i) a cover letter that provided some additional information, (ii) a copy of an email to several Town officials requesting information about the family relationships among various Town residents and expressing concern about the "nepotism and poor conduct that exists throughout Greenwich," (iii) screen shots of various web pages and (iv) a copy of a letter to the Commander of an American Legion Post.

In accordance with its Statement of Procedures and Rules of Conduct, the Board proceeded with a review of the report. The first step in any such review is for the Board to evaluate whether the Board has jurisdiction over the subject matter and the person(s) alleged to have violated the Code. In performing this review, the Board considers only the information contained in the report and will generally assume the truth and completeness of this information without further investigation. After this evaluation, the Board makes a finding as to whether the report (a) makes a complaint that should be further investigated or (b) should be dismissed because it fails to describe a specific violation of the Code over which the Board has appropriate jurisdiction or involves issues or circumstances that are not appropriate to be addressed by the Board in light of the remedies available.

### **Information Contained in the Report**

The report named the First Selectman and a member of the RTM as respondents. A question on the complaint form asked whether influence was exercised "when approvals were given and action was taken" to post "marketing materials" on the Town website. The only Town activity mentioned in the materials submitted appeared to be related to this post, and a screen shot of the Town Calendar was included showing a special event held by a Town Building Committee. The screenshot indicated that the event would involve a forum conducted by a local organization concerning the use of Long Island Sound as a food source. The cover letter for the report indicates that Town officials had been asked "if it was proper to give certain activist/money making programs" like the organization conducting the forum "rights to market their business partnerships on

the Town of Greenwich website.” However, nothing in the posting on the Town Calendar, or in any of the materials submitted, appears to market any product, service or business partnership.<sup>11</sup>

The founder of the organization is the RTM member named as one of the respondents and the remaining screenshots were pages from the organization’s website. One page showed a dedication to the grandfather of the founder, noting his Italian-American decent and citing his “love and appreciation for food” and enjoyment of “fishing and clamming in Long Island Sound.” The other professed to acknowledge that New England is located on “traditional lands and waters” of indigenous peoples. Listed as an “ADDITIONAL CONCERN” on the complaint form is that the dedication on the organization’s website “paid homage to the historical legacy” of the grandfather of the respondent. It suggests that the respondent had a “more than nominal” interest for purposes of the Code of Ethics “as it applies to the 'rights and privileges' in Greenwich not afforded to citizens who are not of Italian-American ancestry.”

The letter to the Commander of the American Legion Post alleged that the organization was “partnered with the TOG Conservation Commission/Cemetery and Leaf Blower Committee” which is identified as being advisory to the 1<sup>st</sup> Selectman. The members of the Town’s Conservation Commission are appointed by the First Selectman and the Commission does have a Leaf Blower Committee, but the Board is permitted to note that the Town has no Cemetery and Leaf Blower Committee that is advisory to the 1<sup>st</sup> Selectman. There is also no indication on the either the Town’s or the organization’s website, or in the minutes of the Commission, that the Town or the Commission is partnered with the organization. There is, however, a mention in the October 5<sup>th</sup> minutes of the Commission concerning the event that was identified in the report, noting that the organization participated with other groups in the event. In the Commission minutes, the event is described as “a celebration of the cultural legacy of people working at the Sound. A raw bar was offered with an educational program tackling the sustainable seafood.”

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<sup>11</sup> The Board notes that the website of the organization itself also does not solicit contributions or offer products or services for sale.

The letter to the Commander of the American Legion Post complained that the participation of the organization at the event was evidence of the Town's "involvement with the Socialism/American Marxism/Communism that is appearing within town programs that are approved and funded by the Town of Greenwich departments and government officials" and specifically faulted the 1<sup>st</sup> Selectman for failing to object to the organization's participation and for not responding to complaints about it. The complaint form also notes that an email was sent to the 1<sup>st</sup> Selectman and not replied to, but does not otherwise mention any official action taken by the 1<sup>st</sup> Selectman with regard to the posting.

### **Issues**

Section 7 of the Board's Statement of Procedures and Rules of Conduct describes the process that is followed when the Board receives a report concerning a possible violation of the Code of Ethics. This includes an initial evaluation of the report in which the allegations made in the report are to be considered in the most favorable light possible. Where direct evidence is provided as part of the report, the Board is bound to consider it, but it is also obliged to take mere allegations of fact at face value if they describe a violation of the Code with sufficient specificity to conduct a productive confidential investigation. Where such an investigation reveals that the allegations are false, the Board dismisses the complaint based on a finding that there is no probable cause to believe that the violation actually occurred. This will conclude the investigation and the record is sealed.

#### *Sufficiency of the Complaint*

The report considered in this decision does not precisely describe a violation of the Code, but contains within a mound of other information certain allusions that might be strung together and considered to touch on the elements of a violation of the Code. The description given above of the information contained in the report has stripped away much of the material that could not have any conceivable relevance to a determination as to whether the Code of Ethics has been violated. But the remaining material is problematic as well, since it consists more of questions than statements and is not organized in a way that describes a specific violation.

*Can a Question be Considered an Allegation?* The most obvious issue to be addressed is whether a question can be considered as an allegation. As there is no need to ask a question if the facts necessary to answer the question are known to the person asking the question, a question can only be sufficient to serve as an allegation if the facts necessary to answer the question are already known to the Board. Thus a report that identified a specific RTM member as accepting a gift in return for voting on a Town matter and asked if the member was a Town Officer under the Code would be a valid complaint, since the Board knows that RTM members are Town Officers as defined in the Code.

The question of who is a Town Officer is raised several times in the report being considered in this decision. The Board can answer this question by referring to the definition of Town Officer contained in the Code, but the question itself does not make an allegation against any specific Town Officer. On the other hand, the report names the 1<sup>st</sup> Selectman and a member of the RTM as respondents. Since the Board can apply the definition to these specific individuals, this can be treated as an allegation that these individuals are Town Officers.

The report also asks if these individuals have a financial interest in the organization that participated in the event listed on the Town Calendar and questions the suitability of Town support for “money making” activities. While the Board could investigate these questions, they are not allegations sufficient to support a complaint, because they require the Board to reach a conclusion about the facts before they are alleged. If the Board were to conduct an investigation and find no financial interest, the person making the report is free to say: “I never said that they had a financial interest!” and the Board’s inquiry would then become a mere fishing expedition or a witch hunt, since it was not based on an allegation of fact.

In Decision 21-02 the Board dismissed a report because it did not allege facts to support the conclusion that the Code of Ethics had been violated. Asking whether a necessary element (i.e. financial interest) exists, without supplying any factual support, requires the Board to make a conclusion that the element exists before it commences an investigation. This does not meet the requirements for a complaint that should be investigated by the Board.

*Rights as nominal interests.* The report suggests that rights and privileges enjoyed by certain individuals due to their ancestry may be more than nominal for purposes of the Code of Ethics. Without specifics as to a particular financial benefit, the Board can only observe that a sense of pride in one's ancestry may be priceless, but that is by definition less than a nominal financial interest for purposes of the Code.

## **Determination and Decision**

The Board determined that the respondents named in the report were Town Officers within the meaning of the Code. However, it determined that the report did not allege facts supporting the conclusion that a violation of the Code existed. The Board made this determination for the following reasons:

1. Section 3 of the Code of Ethics prohibits Town Officers from accepting any gift. No gift was alleged in the report.
2. Section 4 of the Code of Ethics prohibits Town Officers from influencing a Town action in which they have a financial interest. The information provided, evaluated in the light most favorable to the person submitting the report, did not support the conclusion that either the event posted on the Town Calendar or the posting itself provided any financial benefit to either of the Town Officers identified as respondents.
3. Section 5 of the Code of Ethics requires Town Officers to file a report disclosing financial interests in Town transactions. In addition to their being no financial benefit alleged in the report, the posting of a calendar entry is not a Town transaction and the disclosure report would not be overdue until July 31, 2024.

Accordingly, the Board determined that the submission did not qualify as a complaint that should be investigated under the Code and the report was dismissed because it failed to describe a specific violation of the Code.

This decision is limited to the application of the Greenwich Code of Ethics. It should not be interpreted as an opinion with regard to any other local, state or federal laws, rules or policies that might be applicable to the circumstances described. Town Officers are of course responsible for compliance with such laws, rules or policies as may be applicable to them, including the regulations, policies and standards of the Town of Greenwich.

**See also: D 21-02**

## Advisory Opinion No. 24-02

**Date:** February 7, 2024

**Topics:** Acceptance, Conferences, Gift, Influence, Meals, Performance of Official Duties, Reimbursements, Thing of Value, Transaction, Transportation, Travel, Town Employees

**Code Sections:** Section 3, Section 5

**Statement of Facts:**

Two individuals employed in the office of the Town's Registrar of Voters have requested an Advisory Opinion concerning whether to accept reimbursement for expenses in connection their participation in a conference organized by The U.S. Alliance for Election Excellence (the "Alliance"). The conference was held in Chicago, Illinois at the end of November and the Center for Tech and Civic Life (the "CTCL") sponsored the conference by covering the cost. Neither of the individuals requesting the opinion are officers or directors of the Alliance or CTCL.

The Alliance is a non-profit organization established on a non-partisan basis through a funding initiative by The Audacious Project, which is the financial catalyst arm of a group of non-profit organizations funded by the TED Foundation. The TED foundation is funded by various revenue streams, including attendance fees, corporate sponsorships, foundation support, licensing fees, and book sales. Corporate sponsors are diverse, including companies such as Google, GE, AOL, Goldman Sachs, and The Coca-Cola Company. Annual revenues typically exceed

\$50 million<sup>12</sup>. The Alliance was initiated in 2022 with a five year, \$80 million grant from The Audacious Project.

In 2022, after the Town's Republican Registrar of Voters and Democratic Registrar of Voters jointly submitted an application, Greenwich was designated as a "Center for Election Excellence" by the Alliance. The Alliance is a membership organization consisting of election departments of local governments across the United States. It describes its purpose as bringing together election officials, designers, technologists, and other experts to help local election departments improve operations, develop a set of shared standards and values, and obtain access to best-in-class resources to run successful elections.

CTLC is a non-profit that has been granted recognition by the Internal Revenue Service as a publicly supported Section 501 (c) (3) organization. It describes itself as a team of civic technologists, trainers, researchers, election administration and data experts working to foster a more informed and engaged democracy and help to modernize U.S. elections. Its most recent filing with the Internal Revenue Service indicates that over the last five years, over 90% of its revenues were received in the form of contributions from small donors. Funds are used to support election initiatives by local governments, including grants to support memberships in the Alliance. In January 2023, the RTM approved a \$500,000 grant from CTLC to support election improvements in Greenwich, but a second grant for \$9,000 to subsidize the cost of membership in the Alliance failed on a tie vote. A March proposal to rescind the approval of the \$500,000 grant was turned down and the RTM has subsequently approved the Registrars' proposals for expenditure of the grant funds, including membership in the Alliance, by a wide margin.

The conference that is the subject of this advisory opinion was organized by the Alliance and subsidized by CTLC. Its purpose was to allow representatives of various Centers for Election Excellence across the United States to share best practices and work toward developing a set of performance standards, including a

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<sup>12</sup> According to a 2018 article in *Fortune*.



certification program for training. Vendors of equipment or services did not participate in conference activities or contribute toward covering the cost of the conference. CTLC did not require participants to pay a fee for participation at the conference. Participants at the conference were also offered reimbursement by the Alliance for travel costs (the employees incurred expenses for transportation to and from local airports, including coach airfare) and lodging at the hotel where conference activities were conducted. The cost of the hotel rooms was \$199. In addition, conference activities included, at no cost to the participants, two lunches, a pizza dinner following the first day's activities and transportation to and from a local election office for a site visit. However, for participants whose local laws required them to pay the cost of participation, CTLC estimated the per person cost for the conference to be approximately \$300.

**Questions Presented:**

1. Might the employees' participation at the conference influence the performance of their official duties?
2. Is the employees' participation at the conference without cost considered a thing of value? If so, is the issue removed if the Town or they themselves pay the \$300 per participant cost estimated by CTLC?
3. Is the employees' acceptance of free meals and local transportation, provided as part of the conference activities, considered a thing of value?
4. If the employees accept reimbursement for travel costs to and from the conference by CTLC, is that considered a gift or thing of value that might tend to influence the performance of their official duties?
5. Does participation at the conference without cost to the employee create a financial interest in the Alliance or CLTC that is required to be listed on a disclosure form filed under Section 5 of the Code of Ethics?

## **Discussion and Conclusion:**

Section 3 of the Greenwich Code of Ethics prohibits Town employees from accepting certain gifts or other things of value:

“No town officer or his immediate family shall accept any valuable gift, thing, favor, loan or promise that might tend to influence the performance or nonperformance of his official duties.”

Since the performance of employees in the office of the Registrar of Voters relates to the subject of election excellence and participation in the conference involved expenditures for travel, meals and lodging, the possibility that participation in the conference could involve a violation of Section 3 is appropriate to consider.

The question of when the acceptance of conference related travel, meals and other items is considered a thing of value has been previously addressed in Advisory Opinion 24-01. In that opinion, the Board dealt with reimbursements provided to a Town employee as a member of an organization of local officials in Connecticut. In that context, it was assumed that the travel expenses being reimbursed or paid for were a mileage allowance for local travel to the meeting and meals in connection with a limited number of these meetings that included dinner.

This advisory opinion concerns a conference for officials of local governments across the United States. It was held in Chicago, a fairly distant location from Greenwich. The Board notes, however, that Chicago is a logical central location for a national group to hold a conference, and that the conference was held at the end of November, when the “Windy City” is not known to be a particularly attractive tourist destination. The timing in late fall also makes it a more logical destination for a conference, as standard room rates are likely to be lower than during other times in the year. Still, because of the greater distance and the urban location, the expenses might be expected to differ significantly in degree from the expenses specifically enumerated in Advisory Opinion 24-01.

The nexus, in Section 3 of the Code, that the words “tend to influence” makes between the *receipt* of something of value and the *performance* of official duties is an important one. It is clearly intended to cover more than an explicit quid-pro-quo. Yet, taken in its most expansive sense, it would require all Town employees to work for free. In their report to the RTM supporting its passage, the Committee that drafted the Code of Ethics stated their intent to articulate a straightforward set of principles and specifically mentioned that they envisioned these principles being applied in a practical way in various contexts as circumstances required. Thus one purpose of the Board of Ethics is to resolve issues that might arise as a result of the economical wording they used to articulate the principles expressed in the Code. In the specific context of the issues raised in this advisory opinion, therefore, the Board must provide more detailed guidance on the issue of when the performance of official duties should be considered influenced and when travel and other related expenses may be considered a thing of value.

### *Influencing Performance*

The conference that is the subject of this advisory opinion was designed to allow election officials to share experiences and perspectives about how to do their jobs better and its theme was improving elections. As employees in the office of the Registrar of Voters, we assume that the employees requesting this advisory opinion were at least hopeful that attendance at the conference might help them improve the performance of their official duties. As a result, participation could be expected to influence their job performance.

But the Code of Ethics does not prohibit Town Officers from engaging in activities that might tend to influence their job performance. In adopting the Code of Ethics the RTM was entitled to assume that people will do their job, not only correctly, but as best they can. While the Board has been given the responsibility for clarifying otherwise ambiguous provisions of the Code as they apply in specific circumstances, it is a responsibility that can only be properly discharged by considering the intent of the RTM when it adopted the Code. Clearly, the Code was not intended to prohibit activities that are necessary in order for employees to perform official duties as best they can, and this should include efforts to improve the performance of their official duties.

What the Code prohibits is accepting something of value that might tend to influence job performance. Therefore, Town Officers clearly can participate in a conference that might influence the performance of their official duties without violating the Code of Ethics as long as they do not accept anything of value as a result. Determining whether anything of value would be accepted as a consequence of attending the conference or accepting reimbursement for it therefore requires consideration.

### *Value of Participation at the Conference*

Whether it is received on or off the job, formal training in the skills necessary to perform well as an employee or other Town official is a valuable thing. The experiences gained from doing one's job is also a kind of training and plays a part in job performance, as valuable lessons are learned from interacting and comparing notes with co-workers, customers and others. This would include the interactions that would be expected to occur at a conference organized to allow local election officials to exchange perspectives and ideas about how elections could be improved.

The Board has been provided with the schedule of activities for the conference. None of them seem unrelated to the purpose of the conference in providing a venue for the exchange of ideas about how best to conduct elections. Just as the RTM was entitled to expect Town employees to do their job, it was also entitled to assume that they would be compensated for that effort and that necessary expenses would be covered. While the opportunity to attend the conference undoubtedly provided value to the employees who requested this advisory opinion, it is a value inherent in doing their job, not a value received in exchange for neglecting their job or treating a particular individual, group or organization differently from others. Consequently, the Board does not consider the value provided by participation in the conference to be any less a normal consequence of doing their job than receiving their salary or reimbursement for necessary expenses.

The fact that the conference activities were all reasonably related to the performance of the employee's duties makes it unnecessary to consider whether the result would be different if a fee for attending the conference was paid by the

employees themselves. The result might be different if entertainments and other activities unrelated to their official duties were included in the conference activities, as discussed in Advisory Opinion 24-01. In that case, the Board might need additional documentation to determine whether the suggested per person cost of such unrelated activities was in fact a reasonable estimate. If it were, then the fact that it was paid for by the Town official personally would make a difference.

### *Acceptance of Meals and Transportation*

The issue of conference related meals and local transportation was also considered in Advisory Opinion 24-01. In that instance, it was assumed that private sponsors might be responsible for the costs, while in this case, the costs were borne by the non-profit organizing the conference. Section 3 of the Code does not, however, make any distinction regarding the source of the gift, promise or other thing of value received. Thus, whether the cost is borne by a for-profit or non-profit entity is not the deciding factor here, only whether the value was received.

Since the Board has determined that participation at the conference was a consequence of performing official duties, the answer to the question of whether any value was received depends upon the value of the thing received in relation to the work related tasks being performed. In Advisory Opinion 24-01, the Board pointed out that the town's Human Resources Policy Manual permits Town employees to be reimbursed for ordinary and necessary expenses incurred in fulfilling their Town responsibilities, It indicated that, by limiting the expenses to those that are *ordinary and necessary*, the Town's policy assures that the reimbursement will not provide a disproportionate benefit to the individual.

In this case, the meals and transportation provided free of charge at the conference seem reasonable in the context of the conference activities. The employees could therefore have reimbursed CTLC for their cost and been subsequently reimbursed by the Town for the expense. In that case, the reimbursement would not have been considered a thing of value for the reasons explained above, and the Board does not consider it necessary to go through the formality of a circular exchange of funds in order to document compliance with the Code. Since the employees have documented to the Board that the activities were work related and the expenses reasonable, the Board does not consider the fact that

the expenses were covered by CTLC to have resulted in the acceptance of a thing of value to the employees.<sup>13</sup>

### *Reimbursement of Travel Costs*

For the same reasons that it does not feel that it is necessary for the employees to pay CTLC for the cost of the meals and other expenses it provided for as part of the conference activities, the Board does not believe that it is necessary for the employees to submit their travel expenses to the Town and then apply for the Town to be reimbursed by CTLC. While it feels that appearances would be better served by such a procedure, it cannot say that the procedure is necessary in order to avoid a violation of the Code of Ethics. Moreover, the fact that the employees have requested this advisory opinion should also address any concern over appearances.

The Board has confirmed that the employees requesting this opinion would have been entitled to reimbursement by the Town similar to that available from CTLC. As described in Advisory Opinion 24-01, once it is determined that participation in the conference is within the scope of their normal job responsibilities, the issue becomes whether the reimbursement received from CTLC exceeds that which they would be entitled to receive from the Town. Since it is a *quantum of value over and above* what the Town authorizes for such expenses that is determinative of a violation of the Code, administrative requirements are unrelated considerations. Accordingly, in this case, issues such as whether the expense is within the departmental budget, exceeds a categorical limit, requires a certain signature, or meets a deadline for approval are separate matters and do not bear on the issue of whether the Code has been violated.

What is important in determining whether Section 3 of the Code has been violated is whether the reimbursement is for an expense that would be considered appropriate for the Town to cover as a reasonable expense. So, for example, if the airfare was for a class of service above what the Town permits to be reimbursed as ordinary travel expenses or the hotel accommodations were in a category above that

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<sup>13</sup> It should be noted that the Board only makes this assessment for the purpose of determining whether the Code of Ethics is violated. It is not the role of the Board to determine whether other Town procedures and requirements have been fulfilled.

normally approved by the Town, a violation of the Code could be seen to exist, since the incremental value received above what the Town permitted to be reimbursed would be related to performance of official duties. In this case, however, we are advised that the travel expenses were within the scope of the expenses allowed to be reimbursed by the Town. Consequently, reimbursement from CTLC for the reasonable expense of travelling to and from the conference would not violate Section 3 of the Code of Ethics.

### *Disclosure*

Section 5 of the Code of Ethics requires Town Officers to file a report disclosing any transaction with the Town in excess of \$200 per annum in which they have a financial interest. In covering the cost of the conference, CTLC is not entering directly into a transaction with the Town. The same could be argued with respect to reimbursements made to Town employees who attended the conference, as compared to grants made to the Town to cover the cost to the Town of the employees' participation. In either scenario, however, it seems clear that the intent of the transaction is to benefit the Town and that the employee has a financial interest in the result.

For the same reasons that the Board believes that it is not necessary for the employees to seek reimbursement from the Town and then arrange for the Town to be reimbursed by CTLC, it believes that it is appropriate to consider the reimbursement to the employee to be considered a reimbursement for the benefit of the Town and thus a Town transaction for purposes of Section 5 of the Code. This is a transaction that the employees have a financial interest in, since it covers financial expenditure that they incurred.

This financial interest may not be considered a thing of value for purposes of Section 3 of the Code, but the purpose of Section 5 is different from Section 3. Section 5 anticipates disclosure of financial interests that do not result in a violation of the Code. Rather than being a means of permitting Town Officers to self-report violations of the Code, Section 5 is a mechanism for Town Officers to disclose their interest in Town transactions in which they have an interest even though no violation of the Code is assumed to occur.

In that respect, the subsidy to the Town inherent in covering the cost of the Town employees attendance at the conference is the kind of interest that the Code contemplates being reported. The fact that the employees' interest in the reimbursement is not considered to represent a thing of value over and above what the employees would otherwise be entitled to receive does not remove it from consideration as a Town related transaction in which they have a financial interest that should be reported under Section 5.

It is commendable that the persons attending the conference have requested this advisory opinion. This is an area of some ambiguity and in such cases the Town is always benefited when Town Officers openly seek review by uninterested third parties, whether it is a supervisor, other internal reviewer or review committee, or the Board of Ethics. The Board appreciates the sensitivity of the individuals requesting this advisory opinion in bringing the matter before the Board.

**See Related: A 24-01**



## Advisory Opinion No. 24-03

**Date:** February 7<sup>th</sup>, 2024

**Topics:** Appearances; Influence; Official Duties; Lobbying; Outside Employment;  
Valuable Promise

**Code Sections:** Section 3, Section 4, Section 5

### **Statement of Facts:**

A member of the Board of Selectmen has requested an advisory opinion with respect to proposed employment as a member of an advisory board for a local civil surveying engineering and environmental science firm (the “Company”).

The Company was founded in Greenwich in the 19<sup>th</sup> Century and has participated in the laying out of many of the Town’s subdivisions. It has had a leading role in handling wetlands applications and remains a prominent firm in the area. According to its website, the firm “works closely with the Town of Greenwich.” But recently, it has been expanding operations, particularly in the Hartford area, and has established offices in Darien, Armonk and Florida.

The Company’s services include land surveying, planning and zoning services, civil engineering, and environmental science. In connection with land surveying, it provides topographic, boundary and zoning location surveys, as well as providing construction staking and surveys for lot-line revisions, records, easements, subdivisions and rights of way. These services could conceivably be provided to the Town, but would normally be expected to be provided to private

parties. These parties themselves may make use of the surveys in applications to the Town.

Planning and zoning services include preparation and management of applications and notifications for permits and exceptions as well as overall project management. These would periodically involve appearances before the Town's various land use agencies.

With regard to civil engineering, the Company provides hydrological, flood probability, storm water quality compliance and grade plane analyses and designs rain gardens, storm drainage, septic and sanitary sewer systems and prepares FEMA Flood Elevation Certificates. Its environmental science work includes shoreline development and stabilization, wetlands, lake and watershed management, mitigation and remediation landscaping, soil test monitoring and erosion and sedimentation control services. These activities could also be expected to involve submissions and filings before Town land use agencies as well as appearances before them.

The Company's project management services involve coordinating engineers, architects, landscape engineers, builders and other design and building professionals and providing guidance about the Town approvals that may be involved in the project. This could involve direct employment by the Town as a manager or contact with the Town as a manager for a private party whose project involved Town approvals. In this respect, the Company advertises that its agents "frequently" appear before Town land use agencies and that by close coordination of permit and approval process the Company can provide for "a more predictable and efficient construction experience."

The Board of Ethics has never previously rendered a decision or provided and advisory opinion with respect to such an arrangement. Under CT Gen Stat § 7-12 the Selectmen are responsible to "superintend the concerns of the town, adjust and settle all claims against it and draw orders on the treasurer for their payment." In addition, the Selectman's role is to serve as "chief executive officer" of the Town and Town agent. The Selectman also serves as an ex-officio voting member of the Flood and Erosion Control Board as well a non-voting ex-officio member of all other

town boards, commissions and committees, including land use commissions. Under Section 217 of the Greenwich Code of Ordinances, the Selectman is also responsible to supervise and control all “administrative functions relative to police, fire, highways, sewers and other public works, building inspection, parks, recreation, law, human resources, parking services, fleet management, information technology and purchasing for such purposes.

It is noted that Section 217 requires the Selectman to devote full time to the duties of his office, but does not include land use in the areas enumerated as under the supervision and control of the Selectman. Exhibit A shows an organization chart of Town government as used in the Town’s annual financial report. It shows Planning and Zoning, Conservation and Wetlands reporting to the RTM, while the administrative departments that the Selectman is responsible to supervise and control under Section 217 are shown as reporting to the Selectman.

An offer letter has been received, but not yet accepted, concerning the advisory board position. According to the offer letter, responsibilities of the firm’s advisory board members include: 1) attending monthly strategy meetings; 2) acting as a resource for management and executives to develop and enhance market share, particularly including increasing the visibility of the company with other municipalities in Connecticut and New York, expansion of industry relationships and other related efforts expansion of industry relationships and other related efforts; 3) providing third-party insights, perspectives and ideas; encouragement and support of the exploration of new business ideas; 4) encouraging and supporting the exploration of new product and service areas and other business ideas; and 5) any other responsibilities “that do not conflict with” the member’s role as a Selectman. The offer letter provides that the position will be compensated on a fixed basis with an annual salary of \$10,000 paid in exchange for attendance at meetings of the advisory board that are expected to be held monthly.

The offer letter includes the following statement:

We are aware that you will need to abide by certain limitations imposed under CGS § 7-148h (b), the Greenwich Code of Ethics and the provisions of the Town of Greenwich’s Human Resources Policy Manual. For the avoidance for doubt, this role does not envision that you

would testify on applications before the Zoning Commission, lobby on behalf of [the Company] when any application is in Greenwich or vote on or otherwise influence any matter involving official action by the Town of Greenwich where [the Company] is involved.

In pertinent part, CGS § 7-148h (b) provides that “an elected official of any town has an interest that is in substantial conflict with the proper discharge of the official’s duties or employment in the public interest and of the official’s responsibilities as prescribed by the laws of this state, if the official has reason to believe or expect that the official...or a business with which he is associated<sup>14</sup> will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of the official’s official activity... Any such elected official who has a substantial conflict may not take official action on the matter. [Footnote added.]

The Town of Greenwich Human Resources Policy Manual provides , in pertinent part, as follows:

“Employment by the Town is the employee’s primary job and the employee cannot hold any additional jobs that interfere with the ability to perform their primary job or create a conflict of interest or perceived conflict of interest with their job or with Town policies and interests. If any of the following circumstances are relevant to employees applying for or holding second jobs, the employee must get approval from their department head and the Director of Human Resources.

- The employment is in the same professional field as his/her employment with the Town.
- The outside employment has the potential to present a real or perceived conflict of interest.”<sup>15</sup>

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<sup>14</sup> As defined in CGS § 1-79, an official is considered associated with a business if the official or a member of the official’s family is a director, officer, owner, limited or general partner, beneficiary of a trust or holder of stock constituting five per cent or more of the total outstanding stock of any class of shares in the business.

<sup>15</sup> Courts in Connecticut have also found that grants of authority to members of zoning authorities are inherently limited to the exercise of that authority in an impartial manner and members must avoid any “personal bias or prejudice which imperils the openness and sense of fairness which a zoning official in our state is required to possess.” However, where a member of the authority discloses a possible interest and does not participate in discussion, vote on or otherwise See *Anderson v. Zoning Commission*, 157 Conn. 285, 290 (Supreme Court 1968).

Taken together, CGS § 7-148h (b) and the provisions of the HR Policy Manual substantially overlap the requirements of the Code. Therefore, to the extent that the advisory committee contract contemplates that these, as well as the provisions of the Code, will be adhered to, it can be expected that the parties are aware of the serious consequences that would occur if the services to be provided under the contract involved the use of public office to influence Town actions.<sup>16</sup>

**Questions Presented:**

1. By accepting the offer of a paid position as an advisory board member of a private company, has a Town Officer accepted a “valuable gift, thing favor, loan of promise” under Section 3 of the Code?
2. Where a company is frequently engaged in preparing filings, making appearances and other matters that involve Town entities, should the acceptance from the company of anything of value by a Town Officer be considered automatically to “tend to influence the performance” of official duties? If not, then when might the acceptance of a valuable thing or promise under those circumstances be considered something that “might tend to influence the performance or non-performance” of official duties under Section 3 of the Code?
3. Does recusal from involvement in a Town action necessarily involve “non-performance of official duties” under Section 3 of the Code where a Town Officer is responsible for “supervision and control” of the matters related to the Town action?

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<sup>16</sup> Where the offer of employment specifically contemplates compliance with CGS § 7-148h (b) and the HR Policy Manual, the Board is entitled to assume in rendering its advisory opinion that the official does not contemplate activities that would, regardless of any opinion by the Board, be in violation of its provisions.

4. Does serving in a paid position as an advisory board member of a private company give a Town Officer a substantial financial interest in the private company within the meaning of Section 4 of the Code?

5. Does serving in a paid position as an advisory board member of a private company require a Town Officer to file a disclosure statement under Section 5 of the Code?

### **Discussion and Conclusions:**

The issues raised in this advisory opinion are similar to those that have frequently been addressed by the Board in the past in the context of unpaid Town Officers whose employers may be involved in transactions with the Town. In Advisory Opinion 19-01, the Board also addressed the circumstances under which a full time Town employee could serve on the Advisory Board of a Town contractor. In that case, however, the purpose of the advisory board was to garner feedback from customers and there was no compensation paid. Accordingly, the Board addressed ways that the employee could avoid receiving anything of value in connection with the activities of the advisory board, such as inappropriate travel, entertainments and other emoluments.

In this advisory opinion, the Board will address the issues in the context of an offer of a paid position which, if accepted, would establish a continuing financial relationship between the Town Officer and a business that has frequent occasions to be involved in Town transactions. In addition, this opinion involves a Town Officer with broader supervisory responsibilities than were involved in Advisory Opinion 19-01.

1. *Acceptance of a Thing of Value.* Section 3 of the Code of Ethics contains a broad prohibition against the acceptance by Town Officers of things of value that might tend to influence the performance or non-performance of their official duties:

“No town officer or his immediate family shall accept any valuable gift, thing, favor, loan or promise that might tend to influence the performance or nonperformance of his official duties.”

The Board has frequently been asked to provide advisory opinions as to whether unpaid appointed officials are prevented from serving as Town Officers when their private business interests may result in a conflict of interest with their duties as Town Officers. Here the Board is being asked to consider whether an elected Town Officer who serves full time and receives a salary from the Town, may take a paid position with a private company that is likely to engage in business (both directly and indirectly) before the Town. This places similar issues in a somewhat different context and provides the Board with the opportunity to explore the differences in context and give guidance in more detail.

Since this request involves *an offer* of paid employment instead of an *existing* employment, the first issue the Board would like to address is whether an offer by itself constitutes a valuable thing or promise within the meaning of Section 3. While in some contexts, an offer of employment might have some leverage value in terms of negotiations with another employer, in the context of influencing official duties the Board considers it evident from the plain language of Section 3 that acceptance of the offer is necessary in order for there to be a violation of the Code. Although the Code properly includes a “promise” as among the valuable things that might influence the performance or non-performance of official duties, in the case of an unaccepted offer, either acceptance or the performance or non-performance of the duty is necessary to establish any reliance on the promise. Thus, in the case of a contractual offer, such as the one involved here, acceptance of the offer is necessary for the promises inherent in the contract to become enforceable and render it a valuable thing or promise. Otherwise, unscrupulous parties could gain advantage and compromise the effectiveness of Town Officers merely by offering them a thing of small value in order to force them to recuse themselves from a matter.

The Board has on numerous occasions found that an employment contract gives an employee a financial interest in the employer<sup>17</sup>. This is predicated on the fact that an employment relationship is financially valuable. Therefore, the remainder of

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<sup>17</sup> For example the Board has found a substantial financial interest to result from part-time employment as a bookkeeper (A-83-02) or an instructor in a sports clinic (A-09-02), as well as from full time employment as executives of a company (A-01-02, A-02-03) or as employees of a subcontractor (A-20-01) and a subsidiary company (A-83-01).

this opinion assumes hypothetically that there will be a verbal or written acceptance of the Company's offer, which will represent a valuable thing or promise within the meaning of Section 3 of the Code. It should be noted, however, that the Board does not consider it necessary for a Town Officer to have received money under a contract for it to be considered a valuable thing or promise – the acceptance of the offer is sufficient to create a legal obligation that gives the Town Officer a financial interest in the Company.

2. *Influencing Performance or Non-performance of Official Duties.* Having established that the acceptance of the advisory board position represents a valuable thing, the Board is required to consider under what circumstances the acceptance of the position "might" tend to influence performance or nonperformance of duties and result in a violation of the Code. The Board has consistently cautioned Town Officers who are employed by organizations that may engage in transactions with the Town against creating the appearance of impropriety, but it has never expressed the view that the existence of employment relationships inherently results in the non-performance of official duties.

In Advisory Opinion 01-02, a member of a land use agency that had received an application for a permit was full-time employee of an organization that owned property adjacent to the property that was the subject of the permit request. Noting that the member should not be automatically disqualified because the potential for a conflict existed, the Board instructed the member not to discuss or vote on the permit request, but did not express the view that the member's interest would result in a violation of the Code. Similarly, in Advisory Opinion 02-03, a member of the Board of Selectmen was an executive of an organization that was proposing to lease property from the Town and the Board of Ethics directed that the member avoid any discussion or vote on the matter. Thus it can be seen that, where Town Officers are openly aware of the potential for conflicts to arise and take appropriate steps to avoid any potential influence from affecting the exercise of their official duties, the mere existence of an employment relationship will not automatically be assumed to be a violation of the Code.

When the Selectman serves as a non-voting or voting member of a Town board or commission, including the Board of Selectmen, there are always other



members who are capable of considering and acting upon the matter. Consequently there is no reason why the Selectman should not be permitted to be recused from a matter that may involve financial benefit to the Company, by refraining from participating in any discussion, vote or other action that would affect the outcome and thus avoiding involvement in any official action that could be influenced by employment on the Company's advisory board.

The Selectman has advised the Board that there is no matter currently before the Town that acceptance of the advisory board position might tend to influence. On that understanding, it is the opinion of the Board that acceptance of the position will not in and of itself result in a violation of Section 3 of the Code. This is not a finding that the Code ceases to apply to the relationship, just that Section 3 would not necessarily prevent the arrangement from being entered into. Going forward, Sections 3 and 4 of the Code are designed to work in tandem with each other, so we will now proceed to deal with the process of recusal, which is the primary mechanism by which a violation of the Code may be avoided once an existing relationship has been established.

The Board has issued numerous opinions, decisions and statements in which it dealt with the steps appropriate to achieve recusal.<sup>18</sup> The primary opinions that summarize the steps to take to properly achieve recusal are Advisory Opinions 09-04, 10-01 and 11-01. These opinions recommend that advance notification should be given to alert all appropriate persons that an interest in a matter exists, that the Town Officer involved avoid any discussion or communication concerning the matter, including avoiding any body language or other signals and physically exiting any meeting or conversation in which the matter is discussed, and having the fact that the Town Officer did not participate in discussion or vote on the matter recorded in the appropriate records concerning the matter.

In each of the advisory opinions discussed above, the Town Officer's employment relationship pre-existed the Town Officer's involvement with the

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<sup>18</sup> See A-89-02, S-95-01, A-98-01, S-00-01, A-04-04, A-97-01, D-03-01, S-04-01, A-04-03, A-09-04, A-10-01, A-12-01.

Town and the organization's activities were not significantly concerned with Town actions. In this situation, however, there is a substantial possibility that the Company will be involved in Town actions. Therefore it is incumbent on the Board to carefully consider whether the Selectman's responsibilities are consistent with the expectation that recusal is appropriate.

3. *Where Recusal is Ineffective.* It cannot be said that complete recusal is always sufficient to avoid a violation of the Code. As shown above, the Selectman has personal responsibility to supervise and control significant portions of the Town's operations on a full-time basis. Were these responsibilities to include supervision and control of land use matters, it would not be possible for the Selectman to avoid a violation of the Code through recusal, since recusal would result in non-performance of the duties necessary to discharge the official duty of full time supervision<sup>19</sup>. Since the Selectman does not have supervisory and control responsibilities for land use matters, however, a violation may be avoided by scrupulously avoiding any involvement in matters in which the Company's current or prospective financial results are involved.

Another circumstance where recusal may not be effective in permitting a Town Officer to avoid a violation of Section 3 of the Code is where the need for recusal would occur so often as to seriously hamper the Town Officer's ability to participate in a majority of the activities in which their position requires them to participate. This is a particular concern with respect to a body, such as the Board of Selectmen, where recusal could result in a deadlock. Since the Board of Selectmen is removed from direct responsibility from land use matters, however, recusal in the event of those limited matters that might indirectly have a financial impact on the Company does not appear to be a concern in this instance.

Since the Company has a close relationship with the Town and is involved in a significant number of Town matters, the Board recommends that the parties take appropriate steps to document their compliance with the Code of Ethics, including

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<sup>19</sup> This is a circumstance that becomes more troublesome the higher one rises in the organizational chart. Lower level employees may have the ability to rely on a supervisor or find other employees with the necessary skills to supervise a particular matter appropriately.

steps to ensure that any matters involving specific Town action that are dealt with by the advisory board are identified early enough to make appropriate recusal arrangements and that the necessary steps for recusal are in fact followed. This would involve attention to the agendas and mechanics of advisory board meetings and activities of the Board of Selectmen, as well as arrangements to advise chairs and secretaries of affected boards, commissions and other agencies, as well as the heads of any departments that may be involved with the Company of the advisory relationship and cautioning them to avoid providing inappropriate information to the Selectman or discussing Company related matters that are being dealt with by the Town in the presence of the Selectman or otherwise in a way that would compromise the Town's integrity.

4. *Financial Interest in Town Transactions.* While Section 3 of the Code places its attention on the receipt of value and how it might influence official action, Section 4 of the Code focuses on Town transactions and financial interests in them:

“No town officer having a substantial financial interest in any transaction with the town or in any action to be taken by the town shall use his office to exert his influence or to vote on such transaction or action.”

Section 2 (c) of the Code defines a substantial financial interest as any “financial interest, direct or indirect, which is more than nominal and which is not common to the interest of other citizens of the town.”

As shown above, the Board has always considered an employment relationship to represent a financial interest of an employee in the employer. Moreover, in comparison to the \$300 salary involved in Advisory Opinion 09-02 the \$10,000 offered by the Company in this instance must be seen as substantial and therefore the Selectman will be required to avoid using influence or voting on any transaction between the Company and the Town or any Town action that has a financial impact on the Company that is not common to other citizens of the Town.

Identifying transactions will be fairly straightforward where the Company is directly engaged to provide services to the Town. However, it is noted that a Town

Officer may have a substantial financial interest in a transaction even where the Company is not a direct party to the transaction. Where the Company is involved in making applications, securing approvals and arranging permits, there can be situations in which the Company serves as an agent or facilitator for another party engaged in a transaction with the Town. Under Section 2 of the Code, an “indirect interest” is included within the meaning of “substantial financial interest” and is defined broadly. Thus, through a direct financial interest as a paid advisor to the Company, the Selectman will indirectly inherit a substantial financial interest in matters where the Company provides services as an agent or facilitator to another party as part of a transaction with the Town.

Section 4 not only prohibits using influence or voting on *transactions* between the Town and the Company, it prohibits using influence or voting on Town *actions* that the Company has a financial interest in. The issuance of permits, approvals, variances and waivers represent Town actions that the Selectman will have to avoid to the extent that the company has a financial interest in the outcome. In this regard, the Selectman is again in a position no different from any other Town Officer<sup>20</sup>. To the extent that appropriate mechanisms are set up to avoid any influence or vote by the Selectman concerning Town actions involving matters the Company has a financial interest in, no violation of the Code should be expected to occur.

5. *Disclosure Requirements.* As indicated above, as a paid member of its advisory board the Selectman will have a substantial financial interest in the Company. Accordingly, it will be incumbent on the Selectman to ensure compliance with the provisions of Section 5 of the Code, which provides, in relevant part that:

“Any town officer having a substantial financial interest in one (1) or more transactions with the Town totaling two hundred dollars (\$200.) or more each in a fiscal year, shall file a written statement disclosing said position as a town officer, the nature of said interest in each

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<sup>20</sup> As indicated above, the Selectman only serves ex-officio as a voting member of the Flood and Erosion Control Board. Although care will need to be taken in that instance, as a non-voting ex-officio member of all other town boards, commissions and committees, including land use commissions, the Selectman is not expected to be casting a vote in any of the other town boards, commissions and committees in regard to matters in which the Company has a financial interest.

transaction and the total amount received or expected to be received from such transactions during such year.”

As discussed above, a Town Officer’s employment relationship creates a financial interest in the employer’s business and thus in any transactions with the Town that financially benefit the employer. As a result, transactions between the Company and the Town will be reportable to the extent that the transactions total \$200 or more in the fiscal year.

The Company’s provision of services to individuals making applications, securing approvals and arranging permits will not always have to be reported. For example, in Decision 19-01, in connection with a matter before the Planning and Zoning Commission, the Board commented that “while an application may ultimately involve a transaction with the Town, an application to the Town does not in-and-of itself normally create a Town Transaction.” And in Advisory Opinion No. 19-02, the Board indicated that the mere furnishing of information for inclusion in a Town publication would not be considered to be a “transaction” for purposes of the reporting requirements under Section 5 of the Code. Thus, the determination of what needs to be reported will depend on whether activities in connection with an application, approval or permit involve only providing routine information to substantiate compliance with general requirements or involve affirmative efforts to establish the rationale for a particular waiver or exemption.

Consequently, whether any specific type of application to the Town, and /or any specific services provided by the Company to an applicant relating to such application, will result in a transaction that will need to be reported will necessarily be based on the specific facts of the situation. In the case of these indirect interests, the obligation to report under Section 5 of the Code is imposed on the Town Officer, not the entity involved in the transaction. Yet the requirements of Section 3 of the Code might make it awkward for Town Officer to receive detailed reports (particularly reports in advance) sufficient to meet the reporting obligations. The Board therefore recommends that general discussions with the Company be held to determine whether specific services provided by the Company or other interaction with the Town would be classified as a transaction that needs to be reported. In this regard, the Board notes that the Code of Ethics requires reporting of each

transaction or “series of transactions.” To the extent that transactions fall into a particular grouping, blanket reporting as to a series of related transactions may make the process of reporting easier. The Board would be happy to assist in establishing a process for compliance, including providing further advisory opinions in response to more detailed information in this regard.

To the extent that: 1) the contract specifically acknowledges the Town Officer’s responsibilities under the Code of Ethics, 2) mechanisms are put in place to avoid any discussions or votes that could potentially influence a Town transaction or action that provides a financial benefit to the Company, 3) the requirement to recuse the Town Officer will not affect the Town officer’s supervisory responsibilities, 4) the outside employment involves substantial duties and responsibilities unrelated to the Town Officer’s official duties, and 5) the compensation provided for the services rendered is fixed and reasonable in light of the services to be provided, a Town Officer does not inherently violate the Code of Ethics by entering into a contract for outside employment. While the contract creates an opportunity for the Town Officer to have a financial interest related to their official duties, such opportunities can arise in many different context and the Town must ultimately rely on the good judgement of its Town Officers to act responsibly in those circumstances and avoid involvement in activities in both their official and non-official capacities that would result in a violation of the Code.

By properly disclosing a financial interest in any Town transactions that the Company is involved with, as well as implementing the various measures suggested above, the Selectman can arrange for complete recusal from involvement with Town actions having a financial effect on the Company and may accept the Company’s offer to sit on its advisory board without automatically violating the Code of Ethics.

**See Related: A-83-01, A-83-02, A-89-02, S-95-01, A-97-01, A-98-01, S-00-01,  
A-01-02, A-02-03, D-03-01, S-04-01, A-04-03, A-04-04, A-09-04,  
A-10-01, A-12-01, A-17-01, A 19-01, A 19-02, A-20-01, D-19-01**

# Exhibit A

## Town of Greenwich Connecticut Organization Chart Year Ending June 30, 2022

