

Hamden Board of Ethics Formal Advisory Opinion 2020-1

Re Voting on Town Budget by Councilperson Who Is Employed in a Town Department Funded in the Budget

(per Board of Ethics Reg. §§ 1.2.1; 3.1.4; and 4.3 (Rev. 2014))

RESOLUTION

Be it **RESOLVED**, having received a written request for an Advisory Opinion, and having duly considered the Town Charter (as amended; rev. 2011) and our Code of Ethics, that the Hamden Board of Ethics, under its Rules and Regulations, as amended, adopts by the roll call vote of a quorum of its members the below Advisory Opinion concerning a councilperson discussing and voting on an overall Town budget while being employed concurrently by the Town in a Department funded in the Budget.

Dated June __, 2020

Philip G. Kent
Chair of Hamden Board of Ethics
Duly Authorized

ADVISORY OPINION 2020-1

The Hamden Board of Ethics has been made aware of and received a written request for an advisory opinion concerning the issue of whether a sitting councilperson, namely Kathleen Schomaker, must abstain from voting on the overall Town budget when she is concurrently employed part time by the Town as Hamden's Energy Efficiency Coordinator in the Economic Development and Neighborhood Revitalization Department. Councilperson Schomaker disclosed her employment to the Legislative Council at its recent budget meeting and abstained from discussing and voting upon her department's budget. She did discuss and vote on all other departments and components of the budget but then voiced a "Not Voting" position on the overall Town budget when the Legislative Council voted on the overall Town budget. Nonetheless, the Mayor has vetoed the Town budget approved recently by the Legislative Council and it is therefore important to advise as to whether under our Code of Ethics and the Town Charter the Councilperson may engage in discussion and vote upon the next proposed overall Town budget.

Upon review, and as set forth herein, it is the opinion of the Board of Ethics that Councilperson Schomaker may discuss and vote on the overall Town budget but should recuse herself from any discussion and determination of the specific budget for the Town department in which she is employed.

The Town Charter does not speak to the issue at hand but our Code of Ethics does to an extent. At the outset it is well understood that under our Code of Ethics all officials and employees are prohibited from doing acts that are “incompatible with the best interests of the town” and are required to disclose “private financial or other interests in matters affecting the town.” Code § 30.02 (B). Further, “[p]ublic officials and employees are agents of public purpose and hold office for the benefit of the public. They are bound . . . to carry out impartially the laws of the . . . municipality and thus to foster respect for all government.” Code § 30.04.

Our Code prohibits having a business, personal or financial interest in town business that is “incompatible with the proper discharge of [her] official duties in the public interest, or would tend to impair [her] independence of judgment or action in the performance of [her] official duties.” Code § 30.05 (A). It also prohibits an official or employee from engaging in or accepting *private* employment or rendering services for *private* interests when such is “incompatible with the proper discharge of [her] official duties or would tend to impair [her] independence of judgment or action in the performance of [her] official duties.” Code § 30.05 (B) (emphasis added).

Nonetheless, while such concurrent public service as an official and an employee of the Town has its bounds under our Code, the Code cannot be rendered so inflexible as to preclude a Town employee working in a public position for the Town’s benefit from also holding office as a councilperson. To do otherwise would not only deprive the Town unnecessarily of the expertise and skills that its residents have to offer in public service for the Town’s express benefit, but would also nullify the power of the vote held by each town resident to freely choose their elected leaders. Understanding the tensions that may come about through such concurrent public service or otherwise, our Code’s drafters required wisely that a councilperson with a personal or financial interest in a matter appearing before the Legislative Council must “disclose on the records of the council the full nature and extent of the interest” unless “the [councilperson] abstains from all discussion and disqualifies [her]self from voting on the matter.” Code § 30.07. So long as such an interest is disclosed fully, however, the Code does not forbid a councilperson from voting on the matter if such can be done impartially, independently and in the Town’s best interests.

At present, the Code defines an “interest” as “having a share or concern in some project or affair, as being involved, as liable to be affected or prejudiced, as having self-interest, and as being the opposite of disinterest.” Code § 30.01 (G). A “personal interest” is defined as “[e]ither an interest in the subject matter or a relationship with the parties before a Board of Commission impairing the impartiality expected to characterize each member of such Board or Commission.” Code § 30.01 (K). Under these definitions, it is perfectly ethical for a councilperson who also is employed by a Town department to abstain from discussing and voting upon that department’s specific budget as the determination of the department’s budget line is sufficiently of personal interest as to

impair the impartiality expected of our council members. To say that a councilperson also employed by the Town cannot vote on the budget as a whole after the budget line item for their department has been debated and determined, however, does not follow absent some indication that the councilperson is acting partially or in her own self-interest as to the balance of the budget. Nothing in the Code states that a duly elected councilperson is rendered partial automatically by voting for or against an overall Town budget simply because it contains a pre-set departmental line item that she did not have a role in discussing or determining. Pointing up its flexibility, although not strictly on point, our Code also allows an official or employee who has a financial or other private interest, at least at the request of the Legislative Council, to participate in discussion with or give an official opinion to the Legislative Council, if they have disclosed “the full nature and extent of the interest.” Code § 30.07. Bearing in mind that no Code can and this Code does not cover every scenario in which an ethical question may arise, the above considerations and the checks and balances inherent in having an elected 15 member Legislative Council are sufficient to guard against any indirect personal interest of a single councilperson that may be affected by the approval or rejection of the overall Town budget where a voting councilperson is employed concurrently by the Town and where the Code does not forbid expressly such action on the overall Town budget.

#####