



TOWN OF HAMDEN

Final/Unapproved 08 30 2020

Board of Ethics

Minutes: *The Board of Ethics, Town of Hamden held a special meeting at 7:00 p.m. on Tuesday August 25, 2020 via virtual Zoom; the following issues were discussed:*

Attending: Philip G. Kent, chair; Jean Larson, Ann Pari, Ellen Rosenthal, and Edward Simon.
Absent: Walter Rochow. Also in attendance: Patrice LeMoine, Clerk for the Board.

1. **Call to order:** Mr. Kent called the meeting to order at 7:09 p.m.
2. **New Business:**

Discussion and vote of advisory opinion 2020-2 regarding voting rights of Legislative Councilperson, when Councilperson is concurrently employed in a town department, upon certain work product from the same department.

This topic was previously presented at the August 11, 2020 special meeting where Mr. Kent, chair of the Board, addressed a communication received. This evening he shared his findings with a proposed resolution (Attachment A) and then requested a discussion.

Ms. Rosenthal presented her position regarding past correspondence addressed to the Legislative Council on a particular agenda item, and sometime next week the Legislative Council will meet to vote on the matter. Although this is not a conflict of interest and Ms. Rosenthal is a member of the Board of Ethics, she wanted to bring this situation to the Board's attention.

The Board then proceeded to discuss the resolution presented. As a reminder, the Board noted the employee's role at the Town is not a conflict of interest with vendor relations; and does not create a conflict of interest nor disqualify his/her role of being a town Councilperson. In review of the document, two changes were recommended.

This included a review of the town's Charter, which does not address this subject, as well as the Code of Ethics, which does to an extent.

As the Board agrees, the document prepared focuses on the fairness and justice on the matter.

Motion: Mr. Kent requested a motion to adopt the following:

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 Advisory Opinion (2020-2) concerning a sitting Councilperson's ability to discuss and vote upon work product to which she contributed in her role as a concurrently employed Town employee, is noted in Attachment A.

A motion was made by Ms. Larson to adopt the resolution and to adopt the Advisory Opinion 2020-2 as amended. The motion was seconded by Ms. Pari with said amendment. The results of the vote were four members in favor and Ms. Rosenthal abstained. The motion carried. The resolution and the Advisory Opinion 2020-2, hereto attached to these minutes, as amended as Attachment A.

3. **Adjournment:** Mr. Kent requested a motion to adjourn the meeting. At 7:49 p.m. Ms. Pari moved to adjourn, which was seconded by Mr. Simon. All were in favor.

Submitted by:

s/ Patrice A. LeMoine
Clerk for the Board of Ethics

authorized to approve the contracts. While the Board is mindful of the context noted above, it renders this opinion with a view towards general applicability.

Upon review, and as set forth herein, it is the opinion of the Board of Ethics that Councilperson Schomaker may discuss and vote upon the contracts at issue in her role as a Councilperson.

Neither the Town Charter nor the Code of Ethics speaks to the issue at hand except in a general sense. As we have stated before, 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; see also Town Charter § 3-9.

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).

We have advised previously that while 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 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 or Commission impairing the impartiality expected to characterize each member of such Board or Commission.” Code § 30.01 (K). Under these definitions, a Town employee’s “relationship” is with the Town as its employee working in the Town’s interests. The relationship is not with the other parties to the contracts at issue, except in the normal arm’s length sense. To say that a councilperson also employed by the Town and who contributed to work as an employee that lead up to the negotiations for the contracts at issue, which are conducted by Town counsel and provisionally approved by the Mayor, cannot later discuss and vote on those contracts does not follow absent some indication that the councilperson is acting partially or in her own self-interest as to the contracts. Simply serving in these dual roles is not in and of itself a sufficient litmus test to render such discussion and voting unethical or improper. Nothing in the Charter or the Code states that a duly elected councilperson is rendered partial automatically when they are also employed by the Town for the purpose of working on such matters at some level especially where the councilperson had no power to negotiate the contracts at issue or to approve them in her role as an employee.

In point of fact, this situation is contemplated certainly by General Statutes § 7-421 (b), which states, in relevant part, that “any municipal employee may be a candidate for a federal, state or municipal elective office in a political partisan election and no municipality or any officer or employer thereof shall take or threaten to take any personnel action against any such employee due to such candidacy.” Charter provisions in another town that precluded such dual roles have been ruled invalid. See Meyers v. Westport, 41 Conn. Supp. 295, 298, 570 A.2d 249 (1989) (holding invalid charter provisions that prohibited salaried municipal employees from running for office in town’s legislative body and holding the salaried positions while sitting as elected members of town’s legislative body).

Accordingly, not only do the Code and the Charter not forbid such concurrent service to the Town, our state statutes and decisional law expressly permit it. While it is certainly important to avoid even the perception of a conflict of interest when carrying out such concurrent duties as those noted herein, there is no apparent direct personal or financial interest at stake in the outcome of the vote or decisions made with respect to the contracts at issue. A speculative concern about a potential personal interest is simply not enough to disqualify the Councilperson from discussing and voting on the contracts at issue. Moreover, our Code has measures in place for dealing with actual ethical violations by way of financial or personal interests should they ever arise in similar situations. We see none here, however, that arise simply from such concurrent service, which is expressly allowed by law. Where one is not in charge of her

department and is not authorized to negotiate or approve contracts such as those here there seems even less cause for concern absent actual evidence of a personal or financial interest. Further, Councilperson Schomaker's years of relevant experience appear to be a valuable resource for the Town in both roles that does not automatically create a conflict of interest or disqualify her from discussing and voting upon the contracts at issue in her role as a councilperson even where she did some of the underlying work in her role as a Town employee. As such, it is our opinion that she may act as a councilperson upon these contracts without violating the Code of Ethics.

#####