



# TOWN OF HAMDEN

*Final/Unapproved 08 30 2020*

## *Board of Ethics*

**Minutes:** *The Board of Ethics, Town of Hamden held a special meeting at 10:00 a.m. on Friday August 28, 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 and Suzanne LeMoine.

1. **Call to order:** Mr. Kent called the meeting to order at 10:06 a.m.
2. **New Business:**

The purpose of the meeting was to vote on Advisory Opinion 2020-2 (revised) and Resolution dated August 28, 2020. The vote at the last special meeting, held August 25, 2020, was not properly conducted.

**Motion:** Mr. Kent requested a motion to conduct a role call to vote. A motion was made by Ms. Larson and seconded by Ms. Pari. The vote passed.

The chair called for a vote:

P. Kent	aye	E. Rosenthal	aye
J. Larson	aye	E. Simon	aye
A. Pari	aye		

Ms. Larson moved for approval of the Advisory Opinion 2020-2 as read in Attachment A. Ms. Pari seconded the motion. Mr. Kent, chair of the Board, called for a vote and the Advisory Opinion 2020-2 was approved.

P. Kent	aye	E. Rosenthal	abstain
J. Larson	aye	E. Simon	aye
A. Pari	aye		

**Motion:** Mr. Kent requested a motion to approve the Resolution dated August 28, 2020, hereto attached to these minutes (Attachment A). Ms. Larson moved for approval of the following 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 sitting Councilperson's ability to discuss and vote upon work product to which she contributed in her role as a concurrently employed Town employee.

Ms. Pari second the motion. Mr. Kent, chair of the Board, called for the vote and the resolution was approved.

P. Kent	aye	E. Rosenthal	abstain
J. Larson	aye	E. Simon	aye
A. Pari	aye		

**Adjournment:** With no further discussion, Mr. Kent requested a motion to adjourn. At 10:16 a.m. Ms. Pari moved to adjourn, which was seconded by Ms. Larson. All were in favor to adjourn.

Submitted by:

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

(Attachment A)

**Hamden Board of Ethics  
Formal Advisory Opinion 2020-2**

**Re Sitting Legislative Councilperson's Ability to Discuss and Vote  
Upon Work Product to which the Councilperson Contributed  
as a Concurrently Employed Town Employee**

(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 sitting Councilperson's ability to discuss and vote upon work product to which she contributed in her role as a concurrently employed Town employee.

Dated August 28, 2020

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

**ADVISORY OPINION 2020-2**

The Hamden Board of Ethics has received a written request for an advisory opinion concerning the issue of whether a sitting, duly elected Councilperson, namely Kathleen Schomaker, must abstain from discussion and voting on work product to which she contributed as a part-time concurrently employed Town employee. As required by our Code of Ethics, Councilperson Schomaker disclosed her employment with the Town to the Legislative Council. Councilperson Schomaker is a part-time Energy Efficiency Coordinator, which involves work on various energy issues such as solar programs and energy efficiency for town buildings. As relevant here, in her part-time employment with the Town, Councilperson Schomaker did work that contributed to the negotiations of a contract to upgrade the Town's streetlights and the so-called NORESO contract for energy performance services, both of which are soon to be voted upon by the Legislative Council. In her role as a part-time Town employee, Councilperson Schomaker neither negotiated the contracts at issue nor is she 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.

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