



TOWN OF HAMDEN

Board of Ethics

Draft/Unapproved 01 17 2023

Meeting Recording:

<https://us06web.zoom.us/rec/share/MDqM0aP3fz23ETHpSJcHW3b3M5FS-owmdpXhRo-ySkmXVR4GP379up7k1zOVnkK4.nAqT7dNrkNZGTUu4>

Passcode: b53?A8+Z

Minutes: The Board of Ethics, Town of Hamden held a special meeting at 7:00 p.m. on Tuesday, January 10, 2023, via virtual Zoom; the following issues were discussed:

Attending: Philip Kent, Chair; Jean Larson; Ann Pari; Lynda Rosenfeld; Ellen Rosenthal; and Edward Simon. Also in attendance: Susan Gruen, Town Attorney; and Patrice LeMoine, Clerk for the Board.

- 1. Call to order:** Mr. Kent called the meeting to order at 7:04 p.m. Roll call was held and for the record, a quorum was present.
- 2. Approval of Minutes:** Chairman Kent requested a motion to approve the minutes of the December meeting. Ms. Larson motioned to approve the minutes of the regular meeting on December 6, 2022, and was seconded by Ms. Rosenthal. The chair called for a vote:

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

The vote passed.

- 3. Correspondence:** Earlier this evening, the BofE received an email from Ms. Alexa Panayotakis, Deputy Chief of Staff, with a link to the Town's webpage which reflects some of the rules and procedures for complaints or inquiries addressed to the Board. The Board discussed the documents that need updating and posting to the BofE webpage. Mr. Simon and Ms. Larson will review the documents with Ms. LeMoine, who will update the forms and documents and forward them to Ms. Panayotakis for posting.

Mr. Kent noted for the record, he received an inquiry for an opinion. This inquiry will be discussed in confidential session this evening.

The 2023 meeting schedule was updated to reflect changes from the revised town charter. Everyone agreed with the amended schedule (Attachment A).

4. New Business:

- a. Report on inquiries re: advisory opinions/potential complaints – As Mr. Kent noted, we received an inquiry for an opinion.
- b. Charter Commission meeting updates – The revised Town Charter was passed by the Legislative Council and voted at the last mayoral election by the town’s voters. Attorney Gruen noted a few changes from the Charter that affect the boards and commissions.

5. Old Business:

- a. Continued discussion on updating Procedures and Requirements – Mr. Simon presented a draft of the BofE document about procedures. Ms. Larson noted the issues regarding the form and opinion being public. The Board addressed the matter with Attorney Gruen and noted the complaint shall remain confidential, but when the matter won’t be held confidential.
- b. Discussion regarding the status of code revisions, forms and website changes/revision – as discussed earlier, Ms. Larson and Mr. Simon will review the final documents and Ms. LeMoine will present them to the Deputy Chief of Staff for posting.

6. Confidential Session, pursuant to Connecticut General Statutes §1-82a and §7-148h:

Mr. Kent requested a motion for the Board to go into confidential session, so as to hold a discussion regarding an inquiry for an opinion.

At 7:36 p.m. Mr. Kent requested a motion to go into confidential session. Ms. Larson motioned to go into confidential session for the purpose of discussing an inquiry for an opinion, and Ms. Rosenfeld seconded. The chair called for a vote:

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

The vote passed.

At this time, Ms. LeMoine assigned Mr. Simon as co-hosts and all members of the Board were sent to “unrecorded-workroom #1” and Ms. LeMoine withdrew from the meeting. At 8:19 p.m. Ms. LeMoine and the Board returned to the meeting room.

At this same time Chairman Kent entertained a motion to end the confidential session. A **motion** was made by Ms. Larson and seconded by Ms. Rosenthal to end the confidential session. The chair called for a vote:

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

The vote passed.

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. 2022) 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 (#2023-01) concerning whether the hiring of person for a vacant unionized competitive classified service position in a town department in which a relative already works constitutes a violation of our Charter or Code of Ethics. (Noted as Attachment B)

Ms. Rosenthal made a motion to adopt the draft resolution for Advisory Opinion #2023-01. Ms. Larson seconded the motion. The chair called for a vote:

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

The vote passed.

Attorney Gruen will review and finalize the resolution and Advisory Opinion #2023-01, will be attached to these minutes, as Attachment B.

7. Executive Session: No request was presented.

With no further discussion, Mr. Kent requested a motion to adjourn.

8. Adjournment: At 8:55 p.m. Ms. Rosenthal moved to adjourn and was seconded by Ms. Larson. The motion passed.

Submitted by:

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



Board of Ethics

Attachment A

October 13, 2022
(Revised 12 29 2022)

Town of Hamden
Attention: Karimah Mickens, Town Clerk
2750 Dixwell Avenue
Hamden, Connecticut 06518

Dear Karimah:

For 2023, the Board of Ethics will hold meetings virtually until further notice, or in the Town Attorney's conference room, located in the lower level of Government Center, at the discretion of the Board. The meetings will be held every month on the second Tuesday at **7:00 p.m.** as follows:

January 10, 2023	July 11
February 15*	August 8
March 14	September 12
April 11	October 17*
May 9	November 14
June 13	December 19*

Respectfully submitted,

Patrice A. LeMoine
Clerk for the Board of Ethics

/pal

*accommodates a conflict

Revised (12 29 2022); due to Town Charter

Attachment B

**Hamden Board of Ethics
Formal Advisory Opinion 2023-1**

Re: Intradepartmental Nepotism

(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 (#2023-01) concerning whether the hiring of person for a vacant unionized competitive classified service position in a town department in which a relative already works constitutes a violation of our Charter or Code of Ethics.

Dated January 10, 2023

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

ADVISORY OPINION 2023-1

The Hamden Board of Ethics received a written request for an advisory opinion concerning whether the hiring of person for a vacant unionized competitive classified service position in a town department in which a relative already works constitutes a violation of our Charter or Code of Ethics. In particular, the Payroll Clerk position within the Town's Finance Department is vacant currently. The Payroll Clerk position is a unionized competitive classified service position subject both to a collective bargaining agreement and the civil service application and testing process. Jared Galarza, the son of the current Deputy Finance Director, Rick Galarza, was certified for appointment by the Civil Service Commission and is the only eligible applicant for the position at this time. The son disclosed in his application his familial relationship with the Deputy Finance Director and has prior experience as a temporary worker in the Finance Department. Two other applicants were found to be ineligible for failure to meet the minimum qualifications for the Payroll Clerk position. An appointing authority is under no obligation to reject a lone candidate, but if it does it must articulate a non-discriminatory reason for doing so. We note that in this situation the son would not be supervised directly by the father, but rather would report directly to a Payroll Administrator/Supervisor, who, in turn, reports directly to the Finance Director and not the Deputy Finance Director. In addition, the Deputy Finance Director is not the hiring official; rather the Finance Director is. It should be noted, however, that this

is not the first time such an issue has existed in Hamden and it is highly likely to not be the last. As a result, an Advisory Opinion is appropriate and, having received a request, we are obligated to opine on this issue.

A thorough review of our Code of Ethics finds no existing anti-nepotism policy. Our Code of Ethics does, of course, “establish ethical standards for all officials and employees by prohibiting acts or actions incompatible with the best interests of the town and by directing disclosure by the officials and employees of private financial or other interests in matters affecting the town.” Code § 30.02 (B) (rev. 2014). It further provides, in relevant part, that “[p]ublic officials and employees are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the Constitution of the United States and the constitution of this state and to carry out impartially the laws of the nation, state and municipality and thus to foster respect for all government.” Code § 30.04 (rev. 2014). Finally, our Code provides that “[n]o official or employee shall engage in any business or transaction or shall have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his official duties in the public interest, or would tend to impair his independence of judgment or action in the performance of his official duties.” Code § 30.05 (A) (rev. 2014). These laudable principles certainly suggest that the Town should adopt both a Code provision concerning the appearance of impropriety (which has been proposed with a bevy of additional proposed revisions to the Code, but not yet adopted), and a Charter provision or other policy concerning nepotism and other forms of favoritism.

Similarly, our Charter contains no anti-nepotism policy. Our Charter has but one reference challenging nepotism, which is found in Charter section 3-9, entitled “Conflict of Interest and Ethics,” which provides a “Statement of Purpose” as follows:

Public office is a public trust. The trust of the public is essential for government to function effectively. Public policy developed by Officials affect every citizen of the municipality, and it must be based on honest and fair deliberations and decisions. *This process must be free from threats, favoritism, nepotism, undue influence, and all forms of impropriety so that the confidence of the public is not eroded.* By setting forth this Statement of Purpose, the Town of Hamden seeks to articulate a policy that will continually strive to maintain and increase the confidence of our citizens in the integrity and fairness of their government. Public Officials and employees must discharge their duties impartially so as to assure fair competitive access to government procurement by responsible contractors. In turn, those contractors should conduct themselves in such a manner as to foster public confidence in the integrity of the competitive process. In all cases, the reality and appearance of impropriety should be addressed by the Conflict of Interest Policy and Ethics Ordinance. (Emphasis added.)

While the above Statement of Purpose certainly suggests that the Town rejects nepotism in the making of public policy by our Town Officials, this provision is not directed squarely at the Town’s hiring decisions and is not, in and of itself a fully embodied anti-nepotism policy. Moreover, while this situation may suggest evaluation under an appearance of impropriety rubric (which also does not exist at present in Hamden) it is difficult to label it as an example of nepotism because we have no evidence of undue influence (the applicant is not being hired by his father but potentially being hired by a higher ranking official to whom the father reports) and the applicant was found via a separate application and testing process controlled by the Civil Service Commission to be the only currently eligible applicant. Even if this was a clear example of nepotism, the issue is not so simple when dealing with a unionized competitive classified service position.

As we have stated, no Hamden rule or policy provides explicitly for any procedure for disqualifying based on nepotism an eligible applicant certified by the Civil Service Commission from being hired for a unionized competitive classified service position. If the Town were to adopt such an anti-nepotism policy however, the policy, would have to be the product of mandatory bargaining under the Municipal Employees Relations Act (“MERA”), because it affects a condition of employment for bargaining unit members.¹ Under Connecticut General Statutes § 7-470 (a) (4), municipal employers are prohibited from refusing to engage in collective bargaining, which under the statute is defined as, among other things, conferring in good faith with respect to conditions of employment. See Connecticut General Statutes § 7-470 (c).² Accordingly, to arrive at an anti-nepotism policy, it appears the Town needs to bargain with all employee organizations to which MERA applies, which have a valid collective bargaining agreement, and whose members would thereby be subject to the policy.³

¹ In the case of *City of Hartford v. Conn. State Bd. of Labor Rels.*, 2014 Conn. Super. LEXIS 1119 (Conn. Super. 2014) (Prescott, J.), the court found that because a municipality’s adoption of a nepotism policy affected the conditions of employment of a unionized employee, the adoption of such a policy was a mandatory subject of bargaining under MERA and the municipality was required under Connecticut General Statutes §§ 7-470 (a) and (c) to bargain collectively with the Hartford Municipal Employees Association, Inc. (the city’s bargaining unit) over the adoption of the policy. In reaching that decision, the court also considered the impact of home rule authority, such as a municipality’s ability to generate by law a code of ethics, but found that where the policy at issue affected a condition of employment it was subject to mandatory negotiation. See id., 2014 Conn. Super. LEXIS 1119 at *22.

² See https://www.cga.ct.gov/current/pub/chap_113.htm#sec_7-470.

³ Under Charter section 8-4 (A)(1)(c), the Finance Director may appoint and remove employees in accord with the civil service rules, which in turn require a certified eligible candidate to be selected and appointed within sixty days, subject to renewing the certification process by request. That request must, however, explain why the original certification was permitted to expire. Thus, it may be possible for the Town to use its civil service rules to request from the Civil Service Commission a new

Here, where unilaterally adopting a nepotism policy that affects a condition of employment by eliminating or weakening the ability of a candidate to be appointed to or hired for a position for which he has been found eligible under the civil service system, such a policy would likely require good faith collective bargaining to be adopted where it impacts unionized competitive classified service positions. To do otherwise likely would be seen as an illegitimate departure from the civil service system. As a result, Hamden would be best served by bargaining with all employee organizations within the coverage of MERA.

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 must disclose “private financial or other interests in matters affecting the town,” while also carrying out “impartially the laws of the . . . municipality and thus to foster respect for all government.” The Charter expresses similar principles. Our Town policies must more explicitly set forth controls, therefore, to mitigate the potential harms derived from unchecked favoritism in any form. That said, where the proposed hire does not violate a clearly expressed town policy, Charter provision or Code section, and in light of the other considerations explained herein, we cannot conclude that it constitutes a violation of the Charter or the Code, at least under the specific circumstances present here. As we have alluded, however, the Town would likely benefit from an anti-nepotism policy and it is urged to formulate and adopt such a policy applicable to non-union positions, as well as in connection with contractors and other third party transactions, and to negotiate a comprehensive anti-nepotism policy with Town unions that is applicable to all Town unionized competitive classified service positions.

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certification of candidates from its eligibility list before appointing a person to the position at issue, but the Civil Service Commission may decide to certify the candidate again and a court may find that, without a policy prohibiting nepotism, such an action interjects an illegitimate consideration into the appointment process, which also violates the civil service system and undermines its purpose. This is a treacherous merry-go-round that does not resolve the nepotism issue and has great potential to engender other problems, including potential lawsuits. Courts will review challenges to civil service commission actions and decisions to determine whether “the civil service commission had exercised its authority in that case in a manner that furthered, rather than undermined, the purposes underlying the civil service system.” Kelly v. City of New Haven, 275 Conn. 580, 617, 881 A.2d 978, 1001 (2005).