



TOWN OF HAMDEN

Approved 06 08 2022

Board of Ethics

Minutes: The Board of Ethics, Town of Hamden held a regular meeting at 7:00 p.m. on Tuesday, April 5, 2022 via virtual Zoom; the following issues were discussed:

Topic: Board of Ethics

Start Time: April 5, 2022 7:00 PM

Meeting Recording:

<https://us06web.zoom.us/rec/share/GVLxXScPM8xs7FEILVvtB0b52CFFVILBFrkA0Z9zWIUXPj2JRIFKUwFVNJ9XoHjU.eNHCLfOtufsSMPt>

Access Passcode: t5NTDT^6

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

- 1. Call to order:** Mr. Kent called the meeting to order at 7:06 p.m.
- 2. Approval of minutes of the regular meeting of February, 1, 2022:** Chairman Kent requested a motion to approve the minutes of the regular meeting. Ms. Pari motioned to approve the minutes of the February 1, 2022 regular meeting as presented. The motion was seconded by Mr. Addison. The chair called for a vote:

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

Approval of the of **February 16, 2022 Minutes:** Chairman Kent entertained a motion to approve the minutes of the February 16, 2022 special meeting. A motion was made by Ms. Larson to approve the minutes as presented. Ms. Rosenthal seconded the motion and the chair called for a vote:

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

The motion passed unanimously.

Approval of the of **March 10, 2022 Minutes:** Chairman Kent entertained a motion to approve the minutes of the March 10, 2022 special meeting. A motion was made by Ms. Rosenthal to approve the minutes as presented. Mr. Simon seconded the motion and the chair called for a vote:

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

The motion passed unanimously.

3. Correspondence: Nothing to present.

4. New Business:

- a. Report and/or discussion regarding advisory opinion/potential complaints (with executive session and/or confidential session, as needed).

Executive Session: Mr. Kent requested a motion to go into executive session for the purpose to discuss a response for advisory opinion #2022-1. At 7:15 p.m. Ms. Pari motioned to go into session and was seconded by Ms. Rosenthal. All were in favor, no one opposed. The chair called for a vote:

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

The vote passed unanimously. At this time, Ms. LeMoine withdrew from the meeting.

At 7:34 p.m. Mr. Kent, with the members of the Board, Attorney Gruen, and Ms. LeMoine returned to the meeting. Mr. Kent requested a motion to end executive session. Ms. Rosenthal motioned to come out of executive session at 7:34 p.m. and was seconded by Mr. Addison.

The chair called for a vote:

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

The vote passed unanimously.

At this time, The Board requested approval of issuing a resolution for advisory 2022-1, as amended.

Motion: Mr. Kent requested a motion to approve the resolution dated April 5, 2022, hereto attached to these minutes (Attachment A). Mr. Simon moved for approval of the following resolution, as amended, and was seconded by Ms. Pari:

Be it **RESOLVED**, having received a written request for an Advisory Opinion (2022-1), 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 the interpretation of subsection 7-1 J. of the Town Charter.

Mr. Kent, chair of the Board, called for the vote:

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

The vote passed unanimously.

As mentioned before, Ms. LeMoine asked if the Board wishes to return to in-person meetings. The Board prefers approaching this subject this May prior to the June regular meeting. In the interim, Ms. LeMoine will reserve a meeting room at Government Center, until a final decision is made this May. Attorney Gruen noted the FOIA is preparing a new ruling for municipalities regarding holding meetings, which will be issued April 30; therefore, the Board should receive an update to the rules for meetings this May.

At 7:41 p.m. Attorney Gruen withdrew from the meeting.

Confidential Session: Under the guidelines of the Connecticut General Statutes §1-82a and §7-148h, Mr. Kent requested a motion for the Board go into confidential session.

At 7:41 p.m. Ms. Pari motioned to go into session and was seconded by Mr. Simon. All were in favor, no one opposed. The chair called for a vote:

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

The vote passed unanimously. At this time, Ms. LeMoine withdrew from the meeting.

At 7:59 p.m. Mr. Kent with the members of the Board and Ms. LeMoine returned to the meeting. Mr. Kent requested a motion to end confidential session. Ms. Rosenthal motioned to come out of executive session at 7:59 p.m. and was seconded by Ms. Larson.

The chair called for a vote:

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

The motion passed unanimously.

5. Old Business:

- a. As previously discussed, the Board would like to address at the next meeting the forms for advisory opinions and complaints. One form may require a change for confidentiality purposes. The Board will revisit the status of code revisions and form revisions at the June meeting.

The Board will work from the 2014 version of the code of ethics; discuss the forms for filing an advisory opinion or a complaint; follow-up and review any changes; and Attorney Gruen will contact the Board with her findings.

- b. Report on inquiries regarding advisory opinions and/or potential complaints – Mr. Kent noted the Board may receive a complaint this month.

6. Adjournment: With no further discussion, Mr. Kent requested a motion to adjourn. At 8:12 p.m. Ms. Rosenthal 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

Enclosures:

Attachment A – Resolution

above as to the Planning and Zoning Department and the Economic Development Department, it renders this opinion with a view towards general applicability.

To start, we set forth the Charter provision at issue. Subsection 7-1 J. states in full:

“Required Cooperation. Each Official and employee of any Department of the Town shall assist the Boards and Commissions and the pertinent Departments in carrying out the provisions of this section. Furthermore, in the event a Board or Commission is attached to a Department, the Department Head shall cooperate with said Board or Commission in formulating and carrying out the operational and management policies of the Department.”

Next, we turn to well-established rules of construction in Connecticut. The fundamental objective of construing a law, statute, charter, or ordinance is to ascertain and give effect to its apparent intent. In other words, we seek to determine, in a reasoned manner, the meaning of the language at issue, including whether the language applies in a given situation. Thus, we consider the text of the provision at issue and its relationship to other provisions. If after examining such text and considering such relationship the meaning is plain and unambiguous and does not yield an absurd or unworkable result, then extratextual evidence is eschewed and is not considered. If there is ambiguity, we look for interpretive guidance in the history behind the provision and the circumstances of its enactment, if available, and to its relationship to existing provisions and common principles governing the same general subject matter. Thus, we favor a rational and sensible result. If two constructions are possible, we would adopt the one that makes the provision effective and workable without leading to difficult and possibly bizarre results.

The ATP first asks what “this section” references in the first sentence of subsection 7-1 J. The term “this section” refers clearly to section 7-1, which itself is entitled “General Requirements for Boards and Commissions,” and is broken down into 11 lettered subsections, with additional numbered parts within one subsection. The subsections address a variety of general matters from the creation of boards and commissions, to populating the same, to certain requirements (such as residency or political composition) and restrictions (such as prohibiting compensation or certain “revolving door” appointments). Thus, section 7-1 is itself a section of general applicability to all boards and commissions, except as delineated expressly within its subsections.

The ATP inquires whether the term “pertinent Departments” refers to Boards, Commissions or Departments to which an employee is not assigned if cooperation within the meaning of section 7-1 J. would somehow be detrimental to the policy or operational interests of the Department, Boards of Commissions to which the

employee is assigned. The subsection's first sentence, where the phrase resides, is not concerned specifically with those Boards, Commissions or Departments to which a Town Official or employee is assigned. It references expressly that the official or employee may be a part of "any Department" and shall assist, without any limiting language, the Boards, Commissions or "pertinent Departments" in carrying out the provisions of "this section." In other words, all Town Officials and employees, in whatever Department, are required to cooperate in assisting the various Boards, Commissions and "pertinent" Departments in fulfilling the general requirements set forth in section 7-1. Inherent in this subsection's first sentence is the flexibility to encompass all such Boards, Commissions and Departments of the Town. In sum, as Town Officials and employees, all are obligated to assist each other in the effective and efficient running of the Town. To determine otherwise, especially in the absence of limiting language in the first sentence, is to invite a Charter so bogged down in specific peculiarities of internal governmental workings as to overcome its purpose of setting ground rules for all. Other sections of the Charter become more specific with respect to various Boards, Commissions and Departments.

The ATP then inquires as to whether the word "Furthermore" in the second sentence of the subsection somehow is a "limiting qualifier" with respect to a Department Head's subordinate, or whether it prescribes additional duties for a Department Head alone. The second sentence pertains only to Department Heads and establishes their straightforward duty to cooperate with the Boards or Commissions that may be attached to a given Department Head's Department. This is not to say that an ATP, for example, has no duty to cooperate with Boards or Commissions attached to the ATP's Department or with other Boards or Commissions of the Town in relation to the ATP's job duties simply because the employee is not covered by the meaning of the second sentence. That duty arises in the first sentence of the subsection so there is no need to strain the second sentence to find it. Moreover, it is not this Board's function to opine on how this subsection interacts with the ATP's job description, which itself appears (although we do not opine so) to require expressly not only that the ATP aide the Town Planner but also aide many others in conjunction with the ATP's function.

It is simply beyond the purview of this Board to provide an advisory opinion delineating how the ATP is to perform the duties found in the ATP's job description or whether, in the face of professional complexities that may arise under the current (but potentially temporary) structure of the Planning and Zoning Department and the Economic Development Department, the ATP is required to act or prohibited from acting in a certain manner vis-à-vis the ATP's particular job. The first sentence of subsection 7-1 J. simply is not intended to go farther than mandating cooperation by Town Officials and employees with Boards, Commissions and Departments and the second sentence does not apply to any but Department Heads. What comprises "cooperation" with a given Board, Commission or Department is not intended to be delineated so precisely by this subsection of the Charter as the ATP desires. As

such, this Board will not become drafter of the Charter or a de facto personnel department for the Town. Thus, certain questions of the ATP dealing with job performance and departmental practices and procedures veer too far afield from this Board's purpose, at least in their present form, and shall not be further discussed at this juncture.

The ATP also refers several times to whether subsection 7-1 J. establishes any rights. To be certain, it does not. The subsection is concerned expressly with establishing the duty of "required cooperation" for each Town Official and employee with and between the various Boards, Commissions and Departments. Nowhere does it speak of rights. Accordingly, this Board discerns none in the plain text of the subsection.

In closing, and 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. By mandating cooperation in conducting the Town's business, subsection 7-1 J. coincides with the above requirements of our Code of Ethics.

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