



TOWN OF HAMDEN

Final/Unapproved 12 12 2021

Board of Ethics

Minutes: The Board of Ethics, Town of Hamden held a special meeting at 9:00 a.m. on Sunday, December 12, 2021 via virtual Zoom; the following issues were discussed:

Meeting Recording:

<https://us06web.zoom.us/rec/share/q3QgNfn-MKecYFA7DX9YkhJZXOqvjafgKYBEAaiYQIhnIX4FnWYrintXhVBKJ23y.KEYpeWzbpKj0b6fW>

Access Passcode: !i0HO5e0

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

1. **Call to order:** Mr. Kent called the meeting to order at 9:03 a.m.

It was confirmed that a quorum was present.

2. **New Business:**

The purpose of the meeting was to vote on Advisory Opinion 2021-1 and Resolution dated today's date, December 12, 2021.

Confidential Executive Session: Mr. Kent requested a motion to go into confidential executive session for the purpose to review and discuss the matter of the advisory opinion 2021-1 presented to the Board. At 9:04 a.m. Ms. Pari motioned to go into session and was seconded by Ms. Larson. The chair called for a vote:

D. Addison aye
P. Kent aye
J. Larson aye

A. Pari aye
E. Rosenthal aye
E. Simon aye

The motion passed unanimously.

At 9:15 a.m. Mr. Simon motioned to leave executive session and was seconded by Ms. Pari. 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.

Motion: Mr. Kent requested a motion to conduct a call to vote. A motion was made by Ms. Larson and seconded by Ms. Rosenthal.

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.

Motion: On a motion made by Mr. Kent for the Board to approve or adopt the Resolution as amended, dated December 12, 2021, hereto attached to these minutes (Attachment A). Ms. Larson, seconded by Ms. Rosenthal, moved to approve the Advisory Opinion 2021-1 resolution as amended:

Be it **RESOLVED**, having received a 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 on matters before the Councilperson in his/her role as an officer or member of the Education Committee, and the Legislative Council, while concurrently employed as a Hamden public school teacher.

The chair of the Board, called for a vote.

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

The motion passed unanimously.

3. **Adjournment:** Chairman Kent requested a motion to adjourn the meeting. At 9:29 a.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

Attachment(s):

-Attachment A - Formal Advisory Opinion 2021-1

**Hamden Board of Ethics
Formal Advisory Opinion 202 1-1**

**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 on matters before the Councilperson in his/her role as an officer or member of the Education Committee, and the Legislative Council, while concurrently employed as a Hamden public school teacher.

Dated December 12, 2021

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

ADVISORY OPINION 2021-1

The Hamden Board of Ethics has received a written request for an advisory opinion concerning the issue of whether a Hamden public school teacher, who is not a town employee but who is a duly elected Councilperson may be appointed to the Council's Education Committee and whether such person must abstain from discussion and voting on the budget for the Board of Education. It is apparent that the teacher has, as required by our Code of Ethics, disclosed his/her employment as a Hamden public school teacher to the Legislative Council as a potential conflict of interest. The teacher recently refrained in the role of Councilperson from discussion and voting on the budget for the Board of Education when it was before the Legislative Council. 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 a Hamden public school teacher who is elected as a Councilperson may be appointed to the Council's education committee, which does not deal with budgetary matters, so long as the teacher, when acting as a Councilperson, continues to refrain from participating in or voting upon matters which impact his/her personal interests / private financial interests as a Hamden public school teacher.

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 [his/her] official duties in the public interest, or would tend to impair [his/her] independence of judgment or action in the performance of [his/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 [his/her] official duties or would tend to impair [his/her] independence of judgment or action in the performance of [his/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 [his/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. Similarly, we have opined that a Town Employee working on energy issues and elected as a Councilperson may hold and act in such dual roles subject to recusal for a personal interest, or, to put it another way, absent some indication that the Councilperson is acting partially or in his/her own self-interest. We have discussed how even in that situation, a Town employee’s “relationship” is with the Town as its employee working in the Town’s 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)**.

It follows, as before, that a Councilperson also employed as a public school teacher, but who, while not a Town employee, is yet a public sector employee working in the interests of the public, may, subject to the same recusal considerations where a private financial interest or personal interest is at stake, discuss and vote upon education matters and be appointed to the Council's education committee. 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 in the public sector as a Hamden public school teacher for the purpose of working on such matters at some level especially where the Councilperson plays no role in negotiating, for example, the Board of Education budget through the education committee.

Even if the teacher is a Town employee under state law, such a 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 public, our state statutes and decisional law expressly permit it, at least in similar situations. 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 matters that may come before the Council's education committee to which this teacher, as a Councilperson, may be appointed. A speculative concern about a potential personal interest is simply not enough to disqualify the Councilperson from serving on the education committee. Moreover, our Code has measures in place for dealing with actual ethical violations by way of financial or personal interests should they ever arise. We see none here, however, that arise simply from such concurrent public service, which is expressly or at least impliedly allowed by law under the facts here. Further, a teacher's relevant experience in education may be a valuable resource for the Town to utilize in making a variety of public policy decisions. Such does not automatically create a conflict of interest or disqualify a public school teacher from serving in a committee role as a Councilperson even where it is possible that a teacher may be required to exercise recusal on certain matters that link to the teacher's personal interest or private financial interest. To the extent discussing and voting of the budget for the Board of Education impacts a teacher's personal interest or private financial interest, such as the line item for teachers' salaries, recusal would be appropriate. Yet, a blanket prohibition is not. As such, it is our opinion that a Hamden public school teacher may act as a Councilperson and be appointed to and act within the Council's education committee without violating the Code of Ethics but certainly subject to them.

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