

TOWN OF GREENWICH
BOARD OF ESTIMATE AND TAXATION
LAW COMMITTEE
FRIDAY, AUGUST 10, 2012
Law Department Conference Room at 10:00 AM

Present: Jeffrey Ramer, Chairman; Leslie Tarkington

Other: Aamina Ahmad, John Wayne Fox, Peter Mynarski, Kathleen Murphy,
Greg Bedrosian, Sean Goldrick

The meeting was called to order at 10:00 AM.

1. Indemnification clause in investment vehicles:

Peter Mynarski framed the issue by describing that investment opportunities of the OPEB Trust increasingly have provisions that require indemnity by the Trustee (Town Treasurer) for the account administration. Mr. Mynarski explained that Section 30 of the Charter prohibits any Town officer from undertaking a liability on behalf of the Town without appropriation by the BET and RTM, as may be required. Assistant Town Attorney Eugene McLaughlin has been of the view that the Charter provision prohibits undertaking such an indemnity. It was observed that Nancy Barton may have done some work on this subject matter, and an effort should be made to recover that work, if possible. Town Treasurer, Ms. Murphy noted that similar indemnification language may appear in signed agreements currently in use, and provided an example. There was consensus that the discussion should be continued at a meeting in the first half of September, on a date when Assistant Town Attorney McLaughlin can be available to attend. In the interim, it was requested of the Town Attorney's office that they look at and advise as to four issues:

a. The liability occurring on account administration and the liability occurring with respect to investment activity was distinguished. The Charles Schwab language may be acceptable because the indemnity is being undertaken by the OPEB Trustee for the account administration for the investments. The indemnification is limited and specific to those "arising out of or related to any act or omission to act by any Trustee with respect to the account", and not by the Town directly. Consideration should be given to the fact that the Town Treasurer, acts as the Trustee, and that her functions are administrative, implementing the investment decisions of others, rather than making the investment decisions herself, and any liability for the investments would be covered by separate resolutions for policy and investment direction approved by the OPEB Trust, the BET Investment Advisory Committee, and the BET (policy only).

b. The Charter required bond and/or other insurance that covers the Town Treasurer would afford sufficient insurance coverage to fully protect the Town from any liability undertaken in such an indemnity clause, thus making it possible for the Town to sign such an indemnification.

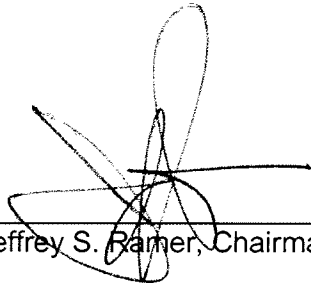
c. Whether the BET and RTM could construct a standing resolution that would make it permissible for certain specified Town officers to sign such an indemnity clause on behalf of the Town.

d. Does the authorization contained in Section 12 of the Charter override or modify the constraint contained in Section 30 of the Charter? Section 12(a) states that the Treasurer shall perform trustee responsibilities including “to collect and receive all monies due the Town including those of any trust fund with which the Town or any agency thereof is charged, keep custody of and manage the proceeds thereof...”. Section 12(c) states that “The Treasurer is to have custody of all securities, bonds, notes, negotiable instruments and other documents evidencing any right, title or interest in favor of the Town”.

The Treasurer expressed concern that the indemnification liability ran directly to her personal assets. This liability should be addressed.

2. The Committee went into executive session at 11:30 AM to discuss pending litigation. At the conclusion of conversations in executive session, the Committee voted at noon to exit executive session.

The meeting was adjourned at noon.



Jeffrey S. Ramer, Chairman