

GREENWICH BOARD OF ETHICS

Minutes of Regular Meeting on September 11th, 2018

Members Present: Paul de Bary, Chair, Robert Grele, Rev. Ian Jeremiah, Secretary

Members Absent: John Margenot, Robert Sisca,

Others Present: Tom Klein, Norma Kerlin, Eric Brower

The meeting was called to order at 5:31 P.M. by the Chair, who noted that a quorum was present and that the agenda for the meeting had been provided to all the members and posted in Town Hall in accordance with Freedom of Information Act requirements.

The Board considered a draft of an advisory opinion (Advisory Opinion No. 19-01), and reviewed the same with Mr. Klein. Mr. Klein indicated that the advisory opinion was clear and that he had no further input to give the Board. Upon motion made by Mr. Grele and seconded by Rev. Jeremiah, the Board voted unanimously to adopt the Advisory Opinion which is attached hereto as Exhibit A. At this point Mr. Klein left the meeting.

Mr. de Bary had distributed a draft of the minutes of the Board's meeting on June 12th, 2018, as filed with the Town Clerk. The Chair asked if there were any comments on the minutes. After review, there were no revisions requested to the draft minutes. Upon motion made by Mr. Grele and seconded by Rev. Jeremiah, the minutes of June 2th, 2018 meeting of the Board were unanimously approved as attached to these minutes as Exhibit B.

Mr. de Bary then informed that the two representatives, from the Commission on Aging, Mrs Burns and Mr. Katz, were not able to be present for the meeting and thus postponed consideration of the advisory opinion with respect to the Commission on Aging's operations.

The Board then reviewed the Annual Disclosure Forms filed by Town Officers. The Chair proposed an addition to the form prescribed by the Board to draw attention to the fact that the disclosure statement is 'to be filed in each year that a Town Officer has a financial interest in one or more transactions totaling \$100 or more.' Therefore the Chair proposed that in the Form, immediately following the request for disclosure of 'Value of Interest,' a notation in red be included stating that "No filing is necessary if this amount is less than \$100." Upon motion made by Mr. Grele and seconded by Rev. Jeremiah, the Board voted unanimously to adopt the revised Form which as attached hereto as Exhibit C.

Mr. Grele moved that the Board convene in executive session at 6:45 P.M. to review the submission of a potential complaint. The motion was seconded by Rev. Jeremiah and unanimously approved.

The next item on the agenda was the review of the Annual Report. The Chair shared a draft with members of the Board and they indicated agreement with the substance of the report. The Chair indicated that he would send the report to the Selectmen and the Moderator of the RTM.

The final item on the agenda was an update by the Chair re: On-line Filings. He indicated that he had met with the Town Attorney concerning the Board's proposed technical amendment to the Code of Ethics and he had approved moving forward with the project.

Following this, there was no further business before the Board and the meeting was adjourned by unanimous consent at 7:25 P.M.

EXHIBIT A

GREENWICH BOARD OF ETHICS

Minutes of Regular Meeting on June 12th, 2018

Members Present: Paul de Bary, Chair and Acting Secretary, Robert Grele and John Margenot.

Members Absent: Rev. Ian Jeremiah, Robert Sisca

Others Present: Patricia Burns, Steve Katz

The meeting was called to order at 5:40 P.M. The Chair noted that the agenda for the meeting had been provided to all the members, posted online and posted in Town Hall in accordance with Freedom of Information Act requirements. He also noted that, with Mr. Grele and Mr. Margenot present, there was a quorum. The members present had received a draft of the minutes of Board's meeting on April 24th, 2018. After review, there were no revisions requested to the draft minutes.

Upon motion made by Mr. Grele and seconded by Mr. Margenot, the minutes of the April 24th, 2018 meeting of the Board were approved as attached to these minutes as Exhibit A.

The Chair then confirmed that the members present had received drafts of a reminder notice to Town Officers concerning their obligation to file disclosure statements prior to July 31st. After discussion of the notice and the mechanics of distribution, the Chair indicated that he would proceed with distribution of the reminder and that it would be attached to the minutes as Exhibit B.

The Board then reviewed a revised draft statement of facts that had been prepared in connection with a request for an advisory opinion from the Commission on Aging. The Chair reported that he had met with Mr. Sisca and that the revisions from the draft that was discussed at the last meeting were a result of that meeting as well as reflecting the discussions of the full Board.

The Board then engaged in further discussion with Mrs. Burns and Mr. Katz to clarify facts and ensure that the issues raised were responsive to the request on behalf of the Commission. The Chair then polled Mr. Grele and Mr. Margenot with regard to their feelings on the issues and agreed to prepare a draft advisory opinion consistent with the consensus of the Board at the meeting. This would be subject to further review and approval at the next meeting of the Board.

At this point, the Board thanked Mrs. Burns and Mr. Katz for their assistance and they left the meeting.

The next item on the agenda was a request for an advisory opinion by the director of a Town Department who had been asked to sit on a “client advisory board” by a Town vendor. A copy of a draft statement of facts and issues had been provided to the members of the Board. The Chair explained that he had been in contact with the person requesting the opinion that afternoon and was expecting that the Board would be able to discuss the draft with the person, but that there must have been a mis-communication.

After reviewing the facts and issues presented in the draft, the members requested additional information concerning the cost, duration and scope of the Town’s contract with the vendor in question. The Chair indicated that he would contact the person requesting the opinion and make further revisions in the draft reflecting the information and the Board’s discussion of the matter at the meeting. This would also be subject to review and approval at the next meeting of the Board.

Following this discussion, there was no further business before the Board and the meeting was adjourned by unanimous consent at 7:14 P.M.

EXHIBIT B

Advisory Opinion No. 19-01

Date: 9/11/2018

Topics: Favor, Financial Interest, Gifts, Vendors

Code Section: Section 3

Statement of Facts:

The director of a Town department has been asked to serve on the “client advisory board” of a Town vendor.

The vendor provides products and services designed for municipal clients. Its website describes its client advisory board as “a collaborative, strategic forum of industry partners to gather input and insights into the technology trends and emerging needs of public sector entities.” It describes the members of the board as “national leaders and innovative thinkers in public sector technology from a variety of municipal cities and counties” and lists the members with their bios. Current members of the board include officials from counties in Arizona, Colorado and Texas, from cities in New York and Rhode Island and from the State of Washington. The director has been advised that the vendor’s goal is to have a ten member board with representatives that reflect a broad geographic cross section of clients.

Service on the advisory board is expected to be unpaid and involve participating in monthly telephone calls at which matters related to the vendor’s service area will be discussed among members of the advisory board, representatives of the company and various experts that the vendor may arrange to participate.

Participation on the advisory board is also expected to involve attendance at two in-person conferences of several days duration each year. In the past, these meetings have been held at the vendor’s headquarters in Manhattan, Kansas, which (although a charming university town) is not generally known as a tourist destination. However, the most recent meeting was held in Buffalo, New York, the location of a member of the advisory board. Thus meetings may be expected to occur at various locations, but the locations are not expected to be tourist destinations and the estimated travel cost of these meetings is not expected to exceed \$2,000 each.

The vendor in question was recently awarded a significant technology contract by the Town, which the director has primary responsibility for overseeing. The contract was awarded under Section 5.4 of the Town's Purchasing Policy, which permits Departments to enter into contracts for services that have been bid out by non-profits or other governmental units, as long as the contract has the same terms and otherwise meets the standard requirements for Town contracts. The director was not familiar with vendor prior to the procurement process and was not approached about serving on the advisory board until four months after the contract was awarded. The initial contract expired on July 1, 2018 and has been extended for a year. For purposes of this opinion, it is assumed that the director may continue to serve on the advisory board at the time that the next decision to replace or renew the vendor is made.

Part of the director's oversight role will be to approve payments to the vendor aggregating approximately \$20,000 per year. In addition, the vendor provides additional services that may be contracted for by other Town Departments. Some of these services may be directly related to the existing contract (such as training in the use of the product under contract). Others may not be directly related to the contract, but may still relate to services that the director would be expected to assist the Town in evaluating and/or implementing. Therefore, the director sees participation in the vendor's advisory board as useful in making better use of the services the Town has already contracted for and also in developing an understanding of services that may be useful to other Town departments, whether those services are provided by the vendor or not.

In addition, the director feels that participation in the advisory board would be beneficial to the Town in several other ways. To begin with, it would provide the director with a structured way of interfacing with individuals who have similar responsibilities at other municipalities. This would not only allow the director to gain insights from their shared experience as it relates to the vendor's products and performance, but also broader issues that are faced municipal officials in positions similar to the director. Since the director would undoubtedly form some level of social connection with these individuals in the context of the advisory board's meetings, it seems likely that these contacts would also be able to provide perspectives on shared issues unrelated to the vendor's services and in contexts unrelated to their mutual service on the advisory board. Therefore, the director feels that such relationships could be of value to the Town by growing a network of contacts that could be helpful even beyond the activities of the advisory board.

Also, it is in the nature of technology services today that they evolve rapidly. Only a small percentage of the vendor's many municipal clients are represented on the advisory board. The director feels that participating in the advisory board would provide Greenwich with privileged access to the vendor's product development process, improving the chances that product upgrades would be beneficial rather than problematical to the Town.

The director is aware that participation in the client advisory board may affect the director's perception of the vendor's products and services: "The content of the meetings might indeed influence my opinion about whether the [*vendor's service*] remains a viable solution for the Town..." However, the director does not believe that this influence will be

the result of a valuable gift or favor: "...that influence would be based solely on the merits [of the product], rather than for personal gain."

The director also believes that service on the Board would be consistent with the director's job description, which includes "*working with internal and external professionals and consultants to analyze requirements and develop new...systems and services.*" In this sense, the director feels that it might be considered part of the director's duties to serve on the advisory board "as long as doing so offers a clear benefit to the Town, is done transparently, and would not involve acceptance of any type of compensation from the vendor for attending."

Although service on the advisory board is unpaid, it can be expected that there will be expenses incurred in connection with serving on the advisory board. The director has discussed the advisory position with the Town Administrator and believes that the benefits of participation in the board would justify the Town in paying the cost of air transportation, meals and lodging in connection with attending the meetings of the board. It can be assumed, however, that certain expenses associated with the meetings themselves, such as local transportation, pads and pencils, refreshments during the meetings and modest meals just before, in between or just after the meetings, may be covered by the vendor. The director has assured the Board, however, that "I would under no circumstances accept from the vendor any type of compensation for attending, such as gift cards, expensive theatre tickets, golf outings or other such entertainment."

Relevant Code Provision:

Section 3. GIFTS AND FAVORS. No town officer or his immediate family shall accept any valuable gift, thing, favor, loan or promise that might tend to influence the performance or nonperformance of his official duties.

Question Presented:

Could the acceptance of a position on the client advisory board result in receipt of a "valuable gift, thing or favor" within the meaning of the Code of Ethics that might "tend to influence the performance or non-performance of the director's official duties" in supervising the vendor's contract?

Discussion and Conclusion:

The Board of Ethics has considered invitations to Town Officers to participate in programs or events sponsored by vendors in two prior advisory opinions. In Advisory Opinion No. 04-02, a manufacturer invited a Town Officer in January to attend a "product review" in "the sunny Palm Desert". The invitation stated that it was made "as promised" and that all travel and related expenses would be paid by the manufacturer. The Board recommended that the Town Officer decline the invitation, noting that:

“Particularly in the case of travel to remote resort locations, there is a possibility that the vendor is covering the cost with the expectation that the Town Officer will consider the opportunity to attend the event as a favor that might influence the performance of his or her official duties.”

Similarly, in Advisory Opinion No. 06-04, the Board indicated that an all-expenses paid invitation to attend a conference in Florida could be seen as a “potential gift or favor”, but indicated that the Town Officer could attend the conference as long as the vendor was not doing business with the Town and was not expected to do business with the Town in the future. It cautioned, however, that the Town Officer’s behavior would be subject to strict scrutiny if the vendor were ever to do business with the Town.

In both of these prior opinions, the vendor involved seems to have been singularly unconcerned with the appearance of undue influence. The meetings were not held in a businesslike setting, but in a resort environment. Nor was the Town expected to have to weigh the benefit to the public against the direct expenditure of public funds. If there was a benefit, therefore, it was clearly to the vendor.

By contrast, in the case of the current request the vendor appears to be sensitive to these concerns. The advisory board is given a mission “to gather input and insights into the technology trends and emerging needs of public sector entities” which is consistent with the interest of the clients as much as the vendor. Participants are expected to have substantial participation from their own workplaces through conference calls. In addition, the locations chosen for the physical meetings appear more logical for the accomplishment of work related objectives than the pursuit of pleasure.

There are clearly elements of the director’s participation in the advisory board that could be seen as favorable to the director. It may provide the director with visibility and professional recognition through the opportunity to network with other professionals. It also offers the director the opportunity to travel at public expense. There are also some expenses that may be expected to be borne by the vendor, such as local transportation to and from working sessions, snacks and refreshments such as coffee, tea, juice and water during meetings and meals served during breaks or otherwise close in time and place to the business activities being conducted. If appropriate discretion is used, however, the Board does not believe that such emoluments should inappropriately influence the director’s job performance.

Although it is not necessarily a day-to-day experience, one would hope that, on occasion, persons who toil in the public interest will find themselves involved in pleasurable or career advancing tasks. Incidental benefit to a public servant is not necessarily harmful to the public interest when it is an ordinary consequence of a job well done. Thus, the Code of Ethics does not impose an absolute prohibition on the receipt of gifts and favors that are incidental to the performance of official duties. It only prohibits them if they have the potential to influence that performance in a way that places the individual’s interest ahead of the public. Where the predominant expense of participation a program or event is approved by a supervisor and paid for by the Town, the Board may presume that the Town Officer’s participation is a normal and beneficial part of the Town Officer’s job.

This presumption is not absolute, however, and could be put aside in circumstances where the benefit to the Town Officer is clearly disproportional to the public interest or targeted in time and place so as to influence the performance or non-performance of specific official duties. If the director's participation were to involve any of the following, the Board would not be inclined to consider the personal benefit to be inconsequential:

1. Expenses for non-local transportation, such as:
 - a. long distance transport by air, sea or train, or
 - b. use of a rental car or company vehicle for an extended period of time.
2. Meals that are excessively lavish or time consuming.
3. Expenses related to entertainments, such as participation in or attendance at theatre productions or sporting events, such as golf outings, ski passes, races, major league sports or other professional competitions.
4. Drinks and other refreshments or entertainments at an offsite location such as a bar or nightclub.
5. Valuable mementoes such as apparel, glassware, artwork or sports equipment or memorabilia.

Since the director has expressly mentioned this type of possibility, we have assumed that such items will be avoided.

There are also elements of participation in the client advisory board that might influence the director's performance or non-performance of official duties by taking time away from them. While participation on the advisory board could help the director to find new approaches to Town problems or see the need for a change strategic direction, it could also provide a means of deepening personal ties between director and the vendor's representatives, which could cause the director to recommend the use of more services by the Town. Clearly these are issues that the director will need to be sensitive to, but they are issues that public officials are required to deal with on a day-to-day basis and continue to maintain their objectivity.

If the director accepts a position on the vendor's client advisory board, the Board of Ethics would expect the director to follow appropriate procedures in documenting the benefits of the position to the Town, consistent with the good practice of seeking this advisory opinion. The director could submit a written memo to the Town Administrator prior to attending any out of town meetings, describing the purpose of the travel and including relevant agenda materials, and/or could include a summary of the benefits of attending the meetings in connection with travel reimbursement requests.

The Board would also expect the director to provide written communications to relevant parties describing ways in which the director's telephonic and in person meetings as a member of the advisory board provided insights into how the Town's operations might be improved. These insights might also be summarized in any self-assessment or notes prepared in connection with performance reviews. Sensitivity in reporting back to staff, other directors, the Town Administrator and the 1st Selectman about the insights gathered

through participation in the advisory board will be important, not only in avoiding the appearance of impropriety, but also in making judgements as to whether continued participation in the advisory board's activities is worth the cost to the Town in time and expense.

The director should also provide a copy of this opinion to the vendor in order to ensure that all parties have consistent expectations.

See Related: A 04-02, A 06-04

EXHIBIT C

Board of Ethics Town of Greenwich, Connecticut

Annual Disclosure Form for Town Officers

Section 2.9 of the Town Code of Ethics requires all Town Officers to file a written statement disclosing under oath any substantial interest in transactions with the Town. Such statements are to be filed in each year that a Town Officer has a financial interest in one or more transactions totaling \$100 or more. Such statement is to be provided in the following form and is to be filed in the office of the Town Clerk within thirty days after the end of the fiscal year. For this purpose:

- (1) a Town Officer includes any official, employee or agent of the Town, any consultant to the Town or any member of any board, department, commission, committee, legislative body or other agency of the Town, whether elected or appointed, and
- (2) a transaction includes the offer, sale or furnishing of any real or personal property, material, supplies or services to the Town for valuable consideration, directly as a vendor or prime contractor, or indirectly as a subcontractor, beneficial owner, family member or otherwise, but does not include services as a Town Officer.

Name: _____

Town Office: _____

Nature of Substantial Financial Interest:

(Describe direct interest, such as owner, partner or shareholder or indirect interest, such as sub-contractor, employee or family member) Persons must file a separate form for their separate interests in unrelated transactions. An interest in a transaction or series of related transactions having a total value of less than \$100 is not required to be reported.)

Value of Interest: \$ _____
(No filing is necessary if this amount is less than \$100)

Transaction or Transactions:

(Provide the date or dates and other appropriate information to identify each transaction, including the name of any Town vendor, contractor or other person affected. Attach additional sheets if necessary.)

Signature:

Subscribed and sworn to before me this ___ day of _____ 201_.

Notary Public _____

**BOARD OF ETHICS OF THE TOWN OF GREENWICH
RECORD OF VOTES BY THE BOARD**

DATE: SEPTEMBER 11, 2018

MOTION/RESOLUTION: TO APPROVE THE MINUTES OF THE BOARD'S JUNE 12TH, 2018 MEETING.

Member	Yea	Nay	Abstain	Absent
Paul de Bary	x			
Robert Grele	x			
Rev. Ian Jeremiah	x			
John Margenot				x
Robert Sisca				x

MOTION/RESOLUTION: TO APPROVE THE ISSUANCE OF ADVISORY OPINION 09-01.

Member	Yea	Nay	Abstain	Absent
Paul de Bary	x			
Robert Grele	x			
Rev. Ian Jeremiah	x			
John Margenot				x
Robert Sisca				x

MOTION/RESOLUTION: TO APPROVE A REVISED FORM FOR THE FILING OF ETHICS DISCLOSURE STATEMENTS.

Member	Yea	Nay	Abstain	Absent
Paul de Bary	x			
Robert Grele	x			
Rev. Ian Jeremiah	x			
John Margenot				x
Robert Sisca				x