

GREENWICH BOARD OF ETHICS

Minutes of Regular Meeting held on December 11th, 2018

Members Present: Paul de Bary, Chair and Secretary for the meeting, Robert Grele, John Margenot

Members Absent: Rev. Ian Jeremiah, Robert Sisca

Others Present: None

The meeting was called to order at 6:12 P.M. due to the late arrival of the Chair, who noted that a quorum was present and 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. The Secretary had distributed drafts of the minutes of the Board's executive session on September 11th, 2018 and the special meeting held on October 31st, 2018. After review, there were no revisions requested to the draft minutes and the Chair directed that they be entered into the record as final minutes in the form attached as Exhibit A to these minutes.

The Chair then asked for consideration of the schedule of regular meetings that had been circulated in advance of the meeting. There were no objections to the proposed schedule. Accordingly, on motion made by Mr. Grele and seconded by Mr. Margenot, the Schedule of Regular Meetings for 2018 was unanimously adopted and the chair directed that it be attached to these minutes as Exhibit B.

The next item on the agenda was a report from the Chair concerning a proposed roundtable discussion being organized by the chair of the RTM's Appointments Committee. Mr. Grele indicated his willingness to serve as a member of the roundtable. The Chair indicated that he would keep the members informed of the schedule for the event.

The Board then reviewed a draft of an Advisory Opinion requested by the Commission on Aging. The draft had been circulated to the members of the Board earlier and had also been reviewed by the Chair and Vice-Chair of the Commission, who had advised the Chair that it met their requirements and asked the Chair to express their appreciation to the Board for its careful work on the issues addressed in the opinion. Following the Board's review and discussion, Mr. Grele moved that the opinion be adopted. The motion was seconded by Mr. Margenot and approved unanimously. The Chair directed that it be attached to these minutes as Exhibit C.

Following this discussion, there was no further business before the Board and the meeting was adjourned by unanimous consent at 6:48 P.M.

EXHIBIT A

GREENWICH BOARD OF ETHICS

Minutes of Special Meeting on October 31st, 2018 Executive Session

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

Members Absent: Rev. Ian Jeremiah

Others Present: Norma Kerlin

The meeting was called to order at 5:05 P.M. by the Chair, who noted that, although Mr. Grele had not yet arrived, a quorum was present and that a notice of the special meeting had been provided to all the members, posted online and posted in Town Hall in accordance with Freedom of Information Act requirements. As a special meeting, the Chair advised that only items on the agenda would be considered. In addition, the Chair noted that the only matter on the agenda was continuation of a preliminary investigation into submissions made by Ms. Kerlin. Therefore, the meeting was to be held in Executive Session. He further reported that the respondent was not able to attend the meeting due to a conflict. As the respondent had not received the required ten-day notice of the meeting, it would be necessary to schedule another meeting of the Board to obtain his responses if the investigation moved beyond the current stage of reviewing the sufficiency of the submission. At this stage, the Board's determination would be based solely on the allegations made in the submission and would not require his participation if the submission was determined not to meet the requirements for further investigation.

The Chair then briefed Mr. Margenot and Mr. Sisca on the events at the last meeting. During this briefing, Mr. Grele joined the meeting at 5:09 PM. The Chair indicated that he and Mr. Grele had misgivings about whether influence had in fact been exerted. This is because the Complainant had described the reports submitted by the staff as professional and "courageous". The complainant indicated that she did feel that the staff reports were thorough and professional, but that she thought that the fact that the individual making the reports was in a subordinate position to the respondent gave the appearance of impropriety. Members of the Board then discussed questions relating to the appearance of impropriety, including mechanisms for recusal, with the Complainant. She indicated that she believed that it would be best practice for Town Officers who held positions on any commission or board relating to land use not to accept employment in connection with applications related to any land use commission, board or agency.

The Chair then reported that he had sent copies of a second supplemental submission from the Complainant (attached as Exhibit A) to all the members of the Board except Rev. Jeremiah, who had recused himself from the matter scheduled to be discussed. Each of the members acknowledged having received and read the second supplemental submission. The Board then discussed the issue of the duty of an appointed officer to affirmatively advise another body about matters within the expertise of the body on which the officer served. This was contrasted to the obligation to recuse oneself from participation in matters being considered directly by the body on which the individual served. After expressing her view to the Board that an affirmative duty did exist, Ms. Kerlin left the meeting at 3:42 P.M.

The Board then carefully reviewed each of the possible violations of the Code that described in the submission. After reaching a consensus that no violation had been properly alleged, the Board then considered the substance of a written statement documenting the decision to dismiss the complaint as required by the Board's Statement of Procedures. Following the Board's review and discussion, Mr. Sisca moved and Mr. Grele seconded a motion to dismiss the complaint and approve a notice of the dismissal to the complaint in the form attached to these minutes as Exhibit B, with such minor corrections and additions as the Chair might find appropriate, if, after further review by the members and consultation with the Chair, such changes or additions were deemed helpful.

Following this discussion, there was no further business before the Board and the meeting was adjourned by unanimous consent at 4:25 P.M.

Exhibit A to 10-31-18 Minutes

Approved 10-31-18

Exhibit B to 10-31-18 Minutes

Approved 10-31-18

EXHIBIT B

Town of Greenwich

Board of Ethics

Regular Meeting Schedule for 2019

The Board of Ethics has adopted the following meeting schedule for its regular meetings during the 2019 Calendar Year:

February 5, 2019

April 9, 2019

June 4, 2019

September 17, 2019

December 10, 2019

Board of Ethics Meetings are usually held at 5:30 P.M. at Town Hall. For specific information concerning the location and time of each meeting, please consult the Town Facilities Calendar. Special and emergency meetings of the Board of Ethics may be scheduled upon notice to the Town Clerk, which will be posted in accordance with the requirements of the Connecticut Freedom of Information Act. That Act requires notices for special meeting to be filed with the Town Clerk and posted on the meeting page of the Board's web site at least 24 hours before the meeting, but does not require notice of emergency meetings where the emergency is justified. Agendas for regular and special meetings are also required to be filed in the office of the Town Clerk and posted on the Board's web site at least 24 hours in advance.

Any person who files a written request, and agrees to pay reasonable charges as described below, will be sent copies of notices of regular and special meetings at the time they are filed with the Town Clerk. Any such request must specify the 1st class mailing address to which the copy of the notice is to be given and will be effective for one year from the date of filing. A renewal request may be filed during January of each year. The cost of this service will be \$35. Persons making such requests should enclose a valid check drawn on a solvent account and made payable to "Town of Greenwich" for the required amount with the request sent to the Town Clerk. The request should be mailed or delivered to the Town Clerk at Town Hall, 101 Field Point Road - Greenwich, CT 06830. A copy of the request should be sent to the Secretary of the Board of Ethics at the same address. Subscriptions for email notifications of Board of Ethics meetings may also be obtained on-line at the following Internet address:

<http://www.greenwichct.gov/list.aspx>.

EXHIBIT C

Advisory Opinion No. 19-02

Date: 9/11/2018

Topics: Boards and Commissions, Commission on Aging, Events, Disclosure, Financial Interest, Listings, Referrals, Sponsorships, Transaction

Code Sections: Definitions, Sections 4 and 5

Statement of Facts:

The Commission on Aging is a Town department managed by a Director working under the supervision of a group of volunteer commissioners, who are nominated by the Selectmen and appointed by the RTM. References to the “Department” in this advisory opinion are to the Commission on Aging as a Town department, while references to the “Commission” are to the members of the Commission on Aging acting as a Town commission. This advisory opinion has been requested by the Chair and Vice-Chair of the Commission on behalf of all of the members of the Commission.

The Director of the Department is a Town employee, appointed by the Commission, who reports directly to the Commission and the First Selectman. The Commissioners provide direction for the Department, review its activities and its budget and approve various matters related to Department operations. As such, Commission members may be asked to vote on Town actions and transactions or may be in a position to influence such actions or transactions.

In its Mission Statement, the Commission identifies “facilitating education, *information on and referrals about*¹ programs, services and benefits” affecting older Town residents as one of its primary activities. Although the Department engages in a wide range of activities related to the Town’s older residents, its principal activities may be described as follows:

Resource Listings. In carrying out this responsibility, the Department provides a directory of services, entitled “Resource Guide for Older Adults”, which contains a comprehensive listing of services including adult day care, counseling, financial assistance, home care, housing, legal assistance, pharmacies, rehabilitation services, transportation and volunteer organizations.

The Resource Guide is prepared under the supervision of the Director. It is the policy of the Department to be inclusive, but occasionally service providers are removed from the

¹ Italics added.

Guide in situations where the provider has lost accreditation or similar circumstances. Listings in the Resource Guide are done in alphabetical order and contain only non-proprietary contact information for the organizations listed, such as addresses, phone numbers and website addresses (the online version of the Resource Guide provides hyperlinks to the websites). The Resource Guide provides no ratings or other qualitative information about the organizations listed and its introduction contains the following disclaimer:

“The listings in this guide are for informational purposes only and do not constitute an endorsement by the Greenwich Commission on Aging. No investigations have been conducted of the qualifications or quality of the services or programs listed...”

In addition to the Resource Guide, the Department publishes a separate Area Transportation Guide, which consists of a listing in chart form of transportation providers in the area that offer special services for older residents, and a monthly newsletter, which describes programs, activities and events at or sponsored by the Town’s Senior Center, which is operated by the Department. The transportation listing provides a description of the type of service, hours, service areas, eligibility requirements and fees in addition to contact information.

There is no fee to be listed in the Resource Guide or Area Transportation Guide. All of these publications are posted on the Town website and distributed to members of the Senior Center (membership is open to all Town residents aged 62 “or better”).

Referrals. The Department does not have a process by which it evaluates the service and resource providers listed in its guides. When asked for referrals by older residents of the Town or their relatives, the staff has a policy of directing callers to the Resource Guide or providing them with at least three referrals without any expressed preference. There are no formal or informal arrangements with respect to such referrals and no compensation is provided in connection with such referrals.

The Commission may also make available, to individuals requesting such information, brochures or other materials provided to the Commission by service providers. Such materials are also not made available pursuant to any formal arrangement or policy and there is no fee or other compensation involved in the distribution of such materials.

Senior Center and Related Activities. The Department operates a Senior Center in facilities owned by the Town. Activities at the Senior Center are varied and include health, transportation, food and employment services, art and fitness classes and various programs and training sessions related to senior health and wellness. At the Senior Center, the Department provides free individual counseling on Medicare, Medigap and Medicare D insurance options through a partnership with Family Centers, Inc. It also sponsors and provides space for discussions on innovations in elder care through a partnership with Aging 2.0 and provides space for meetings and activities of the Alzheimer’s Association and Utilize Senior Energy, Inc. (a non-profit providing employment services for seniors). The Department also provides office and meeting space for Liberation Programs, a non-profit alcohol and substance abuse program.

The Department also has arrangements and partnerships with various businesses and non-profit organizations that provide products and services to the elderly. For example, the Department has an arrangement with the Transportation Association of Greenwich to provide transportation to seniors to and from the Senior Center. It also has arrangements with Greenwich Taxi for a “Share the Fare” program that subsidizes taxi fares for elderly residents of the Town. In addition, the Department uses space for its programs at various facilities in town, such as the Greenwich Library and Greenwich Hospital, that are supported by non-profit entities. Members of the Commission and staff of the Department may contribute to, serve as board members or volunteers for, or have business relationships with, these entities.

Special Events. The Commission also hosts special series of talks, conferences and other educational events intended to inform the public about issues relevant to its mission or provide opportunities for resource providers to exchange ideas about topics of current interest in the area. Examples of this are its Distinguished Lecture Series and its Caregiver Circle Presents Series. In connection with these events, individuals or organizations may be featured or given other recognition. In partnership with Greenwich Hospital, the Commission and the Greenwich Department of Health also sponsor an annual Health and Wellness Expo, which provides information and services related to senior health. Participation in the Expo may be limited to persons sponsoring the event. Members of the Commission are related in various ways to entities listed in and sponsoring the guides, as well as sponsoring the publications and participating in events.

Arrangements for special series are typically made by the Director, who reports to the Commission about sponsorship arrangements and the details of the events. Generally speaking, the Department does not make payments to individuals or organizations who speak, present or provide materials in connection with its events. However, some individuals may receive compensation for their participation directly or indirectly from their employer, who may be a sponsor or otherwise affiliated with a member of the Commission. In the case of all sponsorships, the Commission makes solicitations broadly from interested parties that are involved with health and other issues involving the aging. However, in some cases as mentioned above, participation as a speaker or presenter may be limited to sponsors.

Sponsorships. Sponsorships for the activities of the Department are organized through its friends organization, a non-profit corporation whose purpose is to raise funds to supplement the amounts appropriated by the Town for the Department’s operations. For purposes of this advisory opinion, the Board considers the mechanism by which funds are provided to the Department by sponsors to be inconsequential and considers contributions made to the friends organization as directly benefiting the Department.

Sponsors of the Department’s general activities are given recognition in the Department’s publications. On the covers of the Resource Guide and in a section of the Department’s monthly newsletters, there is space provided to acknowledge sponsors, most of whom are also listed in the guide. The acknowledgements are given space according to the level of

sponsorship, which for smaller sponsors may contain only the name of the sponsor or its logo. The space for larger sponsors may also include artwork, brief descriptions of the services the sponsor provides and feature favorable characterizations of the sponsors services and information about awards and recognitions that the sponsor has received.

It is noted, however, that money is raised separately for the Department's special event series. Contributions for a specific series are treated as dedicated funds, so that if the Department's expenses for the events in the series are less than the amount raised, the remaining funds are reserved for future events in that series. Since some of the for-profit and non-profit sponsors of the series may also participate in certain of the events in the series, care is taken to solicit funds only for the entire series, not for individual events.

Questions Presented:

1. Should the furnishing of non-proprietary contact information to the Department for inclusion in the Resource Guide or Transportation Guide be considered a Town "transaction" for purposes of the reporting requirements under Section 5 of the Code?
2. Does an individual or entity listed in the Resource Guide or Transportation Guide have a "substantial financial interest" in such guide within the meaning of the Code of Ethics?
3. Can contributions to sponsor the Department's activities or a series of Departmental events be considered a Town "transaction" for purposes of the reporting requirements under Section 5 of the Code or result in financial interests such that the member may not exert influence or vote on matters related to the activities and series?
4. Is a referral made by the Department considered a Town "transaction" for purposes of the reporting requirements under Section 5 of the Code?
5. Are the arrangements and partnerships that the Department has with various for-profit and non-profit organizations to provide products or services Town "transactions" for purposes of the Code?

Discussion and Conclusion:

The issues raised in this advisory opinion have provided the Board with an opportunity to take a comprehensive look at a Town department and its operations through the prism of the Code of Ethics. The Commission's careful attention to ethical considerations is part of what keeps Greenwich ahead of the curve on municipal ethics. Therefore, we were not entirely surprised to find that the Commission, being aware of the issues, had already adopted appropriate safeguards to protect against deviations from the Code.

In its very structure, the Code of Ethics addresses the appearance of conflicts from both the outside and the inside, enjoining Town Officers to avoid *outside* influences in Section 3, and advising on how to deal with *internal* conflicts in Sections 4 and 5. Rather than attempt to detail every conceivable situation that might need to be addressed, the Code contains broad language intended to ensure that the salutary purposes of the Code are not circumvented through an overly technical reading. Instead, the Code contemplates that Town Officers will be able to determine on their own what should be done to best comply with the Code, and will seek advisory opinions when the circumstances are not so clear. Indeed, the Commission's very behavior in requesting this opinion and reviewing the issues with the Board in detail, shows an awareness that the spirit of the Code is to encourage practices to evolve that stand up to examination from the outside as well as the inside.

This opinion relates principally to the internal conflicts addressed in Sections 4 and 5 of the Code because they apply most directly to the way Town Officers conduct themselves as they carry out Town operations. In that regard, a slight difference in the language used in Sections 4 and 5 of the Code must be carefully examined. Section 4 provides that:

*"No town officer having a substantial financial interest in any **transaction with the town or in any action to be taken** by the town shall use his office to exert his influence or to vote on such transaction or action."*

while Section 5 provides that:

*"...each town officer having a substantial financial interest in one (1) or more **transactions with the town** totaling one hundred dollars (\$100.00) or more in the year shall file a written statement disclosing his position..."*

Here the inclusion of Town "actions" in the prohibition against influencing or voting on matters can be contrasted to its absence when the Code specifies what Town Officers are required to report. Evidently, the Code considers "actions" to be more self-directed and limited in duration, so that once they are done there is little value in continuing to monitor them, while "transactions" are viewed as involving more parties and being of longer duration, so that continuing disclosure is beneficial.

Another feature of the Code that is useful to bear in mind is that the Code exempts Town employees from reporting on the employment contract that makes them a Town employee. The report of the special Selectmen's committee that drafted the Code expressed the view that this exemption was to avoid having all Town employees have to report every year just to "state the obvious". Consequently, it seems clear that the purposes of the Code are not furthered by taking such a broad reading of the term "transactions" that it would require a quantum increase in filings which merely stated the obvious.

The logic of these provisions will be important to keep in mind as we review the various activities of the Department and the Commission.

1. *Furnishing non-proprietary contact information for inclusion in the Resource Guide and Transportation Guide.*

The Commission's Resource Guide contains over 500 listings, each of which has limited information, such as the name of the service provider, its physical and web addresses and its telephone number. It should be noted that this is information the provider typically makes publicly available as a matter of course in doing business. As described in the Guide, the Commission does not solicit information for the purpose of rating or otherwise approving a service provider. The only reason for excluding a listing is if the provider loses the appropriate license or accreditation to provide the service being listed. As such, the value of the Guide is intended to be its comprehensiveness in identifying who is providing a particular type of service in the area.

The process of collecting this information for use in the Guide involves a request from the Department and a confirmation or transfer of information from the service provider in response. If this process is seen as a transaction between the Department and the provider, the Code of Ethics would require any Town Officer with a financial interest in the provider to file statement disclosing that interest in the year the information is provided or confirmed.

The Board of Ethics does not consider this process to involve a transaction within the meaning of the Code, however. It must be noted that the definition of "transaction" in the Code of Ethics is less expansive than the typical dictionary definition. In pertinent part, it defines a transaction as follows:

Transaction shall mean and include the offer, sale or furnishing of any real or personal property, material, supplies or services by any person, directly or indirectly, as vendor, prime contractor, subcontractor or otherwise, for the use and benefit of the town for a valuable consideration...

Since the process of collecting information for inclusion in the Resource Guide involves the furnishing of information (which may be considered *personal property* or *material*) for the *use* of the Department, there are some transactional elements to the exchange. However, the request for information from the Department creates no obligation on the provider to respond. Moreover, by the terms of the request², the furnishing of information by the responder creates no obligation on the part of the Department to include the provider in the Resource Guide. The process is simply a Town action and a response (or non-response) to it.

It can easily be seen that the process of providing information for the Guide is not unlike the process that many Town residents routinely go through in providing reports to the Town from which it collects information. If the information provided to the Town is simply collected for reporting purposes or to measure compliance with tax or regulatory

² There may be reasons why the Department would feel obliged to include a provider's listing in the Resource Guide, but they do not derive from the process of making the request or receiving the information. Rather, they are a result of a decision to compile the guide made without regard to any transaction between the Department and those listed in the guides.

requirements, it does not involve the reciprocity of interest that the Code contemplates in connection with a Town transaction.

The activity of the Department in compiling the Guide by itself can be compared to the activity of a private vendor who might offer the service of collecting the information contained in the Guide in return for a fee. In the latter case, the contract between the Town and the vendor would clearly be considered a transaction for purposes of the Code, because the vendor would have continuing obligations to fulfill in order to satisfy the contract and the Town would have the obligation to provide valuable consideration in exchange for the information it received. By contrast, when the Department collects the information, the individual exchanges of information with the entities listed result in no obligation on the Town. Their involvement is brief and the activities of neither the reporting entities nor the Town results in any continuing obligation for either party.

Since the exchange of information involved in compiling the Guide does not involve the reciprocity necessary to be considered a transaction for purposes of the Code, the individuals and entities listed in the Code are not required to file a disclosure statement under Section 5 of the Code disclosing their interest in the listing³.

2. *The financial interest of individuals or entities listed in the Resource Guide and Transportation Guide.*

While the persons or entities listed in the Resource Guide and Transportation Guide are not considered to be engaging in a *transaction* with the Town by providing the listing information, any interest that they would have in the *action* of the Town in publishing the listing is still of consequence, particularly if relates to any involvement they might have in the content of the publication. This is because Section 4 of the Code prohibits Town Officers from using their office to exert influence on both *transactions* and *actions* in which they have a financial interest.

It is important here to distinguish between the interest of an individual or entity in their own listing, as compared with an interest in the publication of the listings in the guides as a whole. The prohibition against exerting influence or voting on matters in which there is an interest is not a blanket prohibition. Rather the Code distinguishes between a financial interest that is personal and one that is common to the interest of other citizens of the Town:

Substantial financial interest shall mean any financial interest, direct or indirect, which is more than nominal and which is not common to the interest of other citizens of the town.

As a comprehensive, non-evaluative listing of providers, the Resource Guide is carefully designed to benefit the whole community without providing any particular advantage to a specific provider or group of providers. Therefore, matters relating to the publication of

³ Of course this relates solely to the interest in the listing itself and does not excuse them from filing a disclosure statement to disclose other interests, such as an interest in advertising space provided to sponsors in the guide as discussed in item 3 below.

the Guide as a whole, such as approving the overall budget for its publication and distribution or discussing the general format, layout and design of the Guide, are matters that a member of the Commission may discuss and vote on as matters in which other citizens of the Town have an interest.

A specific listing may result in business opportunities, however. A Commission member could have an interest in matters directly related to that specific listing if it is about them or an entity that they have a financial interest in. Therefore, members who have an interest in a specific listing should bear in mind that it is the commonality of interest which permits them to discuss and vote on matters related to the Resource Guide and Transportation Guide generally. If there is a matter under consideration that specifically affects a listing in which they have a personal interest, such as whether that listing (or a competitor's listing) or the category that includes that listing should be included in or excluded from the guides, it is appropriate to refrain from any discussion of or vote on the matter.

In Advisory Opinion 09-03, the Board suggested safe harbor procedures for RTM Members dealing with committee matters in which they had a non-community interest that was more than nominal. The Board has also provided general guidance as to the handling of by members of boards and commissions in Advisory Opinion 16-01. Similar considerations would apply to members of the Commission. Best practices would suggest that a member who has such an interest immediately notify the Chair of the Commission about the interest as soon as he or she becomes aware of it. The Chair should then ensure that all other members of the Commission and staff of the Department are made aware of the conflict and advised not to discuss the matter with the affected member⁴. In addition, the minutes of any meeting dealing with the matter should indicate that the affected member had the conflict and left the room during discussion and vote.

In summary then, the Board recognizes that individuals and entities listed in the Resource Guide or the Transportation Guide have a financial interest in that listing. Where matters of general applicability are concerned, such interest may be in common with other citizens of the Town, thus relieving them of the obligation to refrain from discussing or voting on such matters. Where a matter may affect that specific listing, or that of a competitor, however, restraint should be exercised.

⁴ It goes without saying that after disclosing the interest to the Chair, the member should not have further discussions of the matter with other members of the Commission or the staff of the Department. In Advisory Opinion 09-03, however, the Board did contemplate that members of the RTM could be permitted to address the RTM or a Committee with respect to a matter in which they have an interest, so long as the interest is publicly acknowledged and the information given is in the form of testimony rather than discussion. Obviously, the representative role of RTM members was paramount in the Board's consideration in that instance. But the Board does believe that, in rare instances, a similar exception might be made in a Commission meeting. In that case, the Commission would have to determine that the member had unique knowledge that would be useful in making the decision, that the appearance would be limited to testimony and that the testimony would have to clearly be limited to informing the Commission, rather than influencing it.

3. Sponsorship Contributions.

Sponsorship of the Department's activities is recognized in various ways. As can be seen from our previous discussion, the mere donation of money, goods and services will not result in a Town transaction for purposes of the Code of Ethics unless the Town enters into a reciprocal relationship that provides valuable consideration to the donor. Acknowledgement of sponsors and disclosure of the amount given should be expected by contributors to governmental entities. Thus, a simple listing of donors by category in Departmental publications or program materials should not be seen as a valuable consideration that turns and otherwise free and unencumbered donation into a formal transaction.

Where the Department makes commitments to provide additional space to display proprietary logos and advertising messages in its publications, or makes commitments with regard to placement, naming rights and levels of participation in program activities, however, valuable consideration may be associated with a sponsorship contribution. To the extent that valuable consideration is received, a transaction will occur for purposes of the Code. This may require Town Officers to make reports under Section 5 of the Code and recuse themselves from participating in discussions and votes concerning the sponsorships under Section 4 of the Code.

The Code of Ethics defines substantial financial interests to include any financial interest that is "more than nominal". Where sponsors receive accommodations in consideration of their sponsorships, it seems likely that the interest will be considered more than nominal. Members of the Commission who have such an interest will need to be sensitive to a greater range of issues related to the Department's publications and events than those whose interest derives from merely being listed. Their interest may extend to matters of content, design, distribution and organization. As outlined above, steps should be taken to avoid participation in discussions or votes that could have an impact on the member's interest.

4. Interests in referrals and promotional materials.

As indicated above, staff members of the Department normally respond to requests for referrals from older residents or members of their families by providing them with copies of the Resource Guide. In circumstances where a more specific referral is appropriate, the Department has a policy provide at least three referrals, with no preference expressed. The Department also accepts promotional literature from service providers, which it makes available at its offices and at certain of its events. As with listings and referrals, the primary interest of the Department in making this literature available is informational.

A formal contract is not required to create a transaction for purposes of the Code. In Advisory Opinion 09-02, an established course of conduct was found to result in a Town transaction despite the absence of any formal arrangement.⁵ However, the Department's neutral policies with respect to referrals and the distribution of promotional materials

⁵ A regular pattern of the Town paying for instruction provided at sports clinics was found to result in a Town transaction despite the absence of any formal arrangement.

prevent the creation of the reciprocal kind of relationship contemplated by the Code in its definition of “transaction”.

As with the solicitation of information for the guides, the exchange of information involved with a referral arises out of the day to day operations of the Department and is prompted by the immediate circumstances. There is no assurance, and can be no advance expectation, that a referral will be made at a particular time or to a particular person. The party to whom the referral is made has provided no service to the Town in exchange for the referral and the Town receives no consideration from either them or the person requesting the referral. Similarly, unless the Department has an established understanding with a provider that it will undertake to make its promotional materials available to persons attending events or visiting its offices, the arrangement by which it makes these materials available is not reciprocal enough to involve a Town transaction. The policy of making the information freely available underscores the fact that the Town has provided no valuable consideration for the material.

The Department provides no assurance to providers that it will make referrals to them or disseminate their promotional materials. It is free to discontinue the policy and its only obligation is to make referrals in a neutral way and treat everyone who provides materials fairly. Thus the activity of the Department in giving a particular referral or making promotional material available lacks the reciprocity to be considered more than a Town action. Accordingly, the Board does not believe that Town Officers with an interest in referrals made, or promotional materials distributed by, the Department under its current policies are required by Section 5 of the Code to file a disclosure statement as to such interest.

It is important to note, however, that the Department’s neutral policies do not remove an individual or entity from having a financial interest in the referral or the materials being made available. Clearly, the distribution of a provider’s promotional materials or the inclusion of a provider among those referred may result in the initiation of a valuable business relationship. Therefore, members of the Commission who are involved with these activities need to be sensitive to the possibility that the Code of Ethics will prescribe their involvement in discussions or votes related to them. It is likely that the Commission would normally deal only with general policies and matters relating to referrals, as to which the Commissioners’ interests would be common to other citizens of the Town. Members of the Commission who have an interest in such referrals and promotional materials should be sensitive, however, to the fact that the impartial behavior of the Department is less evident in this instance than it is with respect to the listings in the Resource Guide and Transportation Guide. It is difficult to imagine a matter concerning referrals or the promotional materials that would reach the level of Commission involvement that could not be seen as in some way affecting the personal financial interest of a Commission member whose firm was providing promotional materials or eligible to receive referrals. In any such matter, the Commission member would do best to follow the procedures outlined above for being recused from involvement in the matter.

5. *Arrangements and Partnerships.*

Many of the services provided by the Department are conducted jointly or through arrangements with other agencies and organizations, including for-profit and non-profit entities. Typical of these relationships is a spirit of cooperation and mutual trust in achieving a worthwhile goal. Often the services are provided through mutual accommodations and undertakings that have evolved over time and are not the result of formal negotiations or written agreements.

As discussed with respect to referrals and promotional materials, the Board has found that a transaction can be created through an established course of conduct that involves reciprocity. Although the circumstances in Advisory Opinion 09-02 provided for a cash payment by the Town, the Code clearly contemplates an exchange of “valuable consideration” other than cash⁶. The provision of office, meeting or event space, or supplies, personnel, technical assistance, information or other resources by the Town to a third party could therefore be seen as valuable consideration in the context of a reciprocal relationship.

The Board is not prepared to say that the characterization of a relationship as a “partnership” necessarily establishes that there is a transaction. Nor is it prepared to say that no transaction exists simply because there is an absence of language suggesting a contractual relationship, or because coordination of activities is a natural result of shared values and objectives. As shown above, each joint activity must be carefully examined to see if the Town has a reciprocal relationship that involves valuable consideration being given by the Town in exchange for property material, supplies or services from another party.

Members of the Commission who are involved with an entity participating in such an arrangement should consider carefully whether the arrangement could be viewed as a transaction for purposes of the Code of Ethics and whether they may have a personal financial interest in the entity. In this regard, it is important to bear in mind that one’s financial interest as an employee, board member, manager or major donor to a non-profit organization is not the same as the organization’s interest itself. With a for-profit entity, the principal objective of turning a profit is obvious, as is the financial interest in that entity held by an owner, partner, contractor or employee. With a not-for-profit entity, however, the financial interest of a major donor, board member, volunteer manager or employee is not aligned with the principal objective of the entity in the same way.

In Advisory Opinions 95-01, 00-02 and 04-4, the Board dealt with the financial interest of board members, managers, donors and volunteers of non-profit organizations engaged in transactions with the Town. The separate financial interest of an employee is apparent,

⁶ It is obvious that joint endeavors and arrangements with other Town entities, such as the Department of Health, Nathaniel Witherell or the Library, do not involve a Town transaction, within the meaning of the Code. While one department or agency of the Town may provide valuable assistance to another, the Town as an overall entity cannot *receive* value that it has *created* itself.

since they derive monetary compensation from the organization. But the Board has indicated that others can also have a financial interest in the strength and management of a non-profit organization that is separate from its own interest in achieving its non-profit objectives. Thus a major donor has a financial interest in the donation being well spent. A board member or volunteer manager has an interest in the organization's sound financial management. These financial interests are personal to them even if they are related to their interest in the objectives of the organization.

If a member of the Commission is involved with an entity that has a partnership or other arrangement with the Department, he or she will need to analyze the arrangement to determine if one or more transactions results from it. Then, for purposes of determining whether they have reporting or recusal obligations under the Code, the member will also need to evaluate his or her own involvement with the organization to see whether a financial interest exists as a result of that involvement. Such an interest would require a disclosure statement to be filed. If it exists, the member may also need to be recused from discussions and votes with regard to the arrangements.

Greenwich relies on both the openness and discretion of Town Officers to achieve adherence to its ethical standards. A review of the issues raised in this opinion demonstrates the sensitivity of the Commission to those issues. The Board takes confidence in the fact that the Commission has taken many steps to avoid the concerns addressed by the Code and is encouraged to believe that, in seeking this opinion, it will continue to evolve procedures designed to minimize any appearance of personal self-interest in the Commission's activities.

The Board is also pleased to have had the opportunity to address a number of issues that relate to the unique ways that Greenwich conducts its Town affairs. We hope that this opinion can be instructive in providing guidance to all Town Officers who may find themselves facing similar issues. Of course, the circumstances applicable to each particular Town department, commission, board or other entity will be different, and appropriate modifications and clarifications to the above guidelines will need to be made. The Board stands ready to address such modifications and clarifications as they relate to other aspects of Town government.

See Related: A 95-01, A 00-02, A 04-04, A 09-02