

**Town of Greenwich**

**Board of Ethics**



**Official Reports**

**for**

**Fiscal Years 1990 - 1994**



**Paul de Bary**

**EDITOR**

*This contains reports of the Advisory Opinions of the Board of Ethics of the Town of Greenwich, Connecticut. The reports contain information drawn from the Board's official records. Consistent with the Greenwich Code of Ethics, information concerning the specific identity of the person requesting an advisory opinion has not been included. However, the relevant facts presented to the Board are summarized, the issues dealt with are identified and the conclusions of the Board are reported using the language from the original opinion or previous reports thereof to the extent possible. Please refer to the Introduction for important additional information concerning the use of these reports.*

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## July 1989 – June 1990

### Advisory Opinion No. 90-01

**Date:** 3/5/90

**Topics:** Conflict of Interest; RTM Members; Consultants; Housing Authority

**Code Section:** Section 4

**Statement of Facts:**

A member of the RTM provides consulting services for the Town Housing Authority. After being appointed to the Tax Review Committee, the member requested advice as to whether employment by the Housing Authority could create a conflict of interest with respect to matters that came before the Tax Review Committee or the RTM. With respect to the Tax Review Committee, the member indicated that the Housing Authority was tax exempt, so that it was unlikely that matters would come before the Committee. With respect to the Housing Authority, the member indicated that if any matters affecting the Housing Authority were to come before the RTM, the member would be sure to disclose the involvement with the Housing Authority, abstain from such matter and “have that abstention officially recorded by my District Chair.”

**Question Presented:**

Can a member of the RTM avoid a conflict of interest by abstaining from matters relating to a Town agency that the member works for as a consultant?

**Discussion and Conclusion:**

The Board acknowledged receipt of the request and advised the member that the member was following the proper procedures.

## Advisory Opinion No. 90-02

**Date:** 5/8/90

**Topics:** Improper Influence; Town Employees; Voting

**Code Section:** Section 4

**Statement of Facts:**

A member of the Representative Town Meeting of the Town of Greenwich (RTM) requested an Advisory Opinion to clarify “how the conflict of interest provision of the Town Ethics Code applies to RTM members who wish to speak on an issue and vote on an issue.” The member serves on the Legislative and Rules Committee of the RTM and had been advised by the RTM moderator that the Moderator’s Committee had recently considered whether there was a need for such an Advisory Opinion. The Moderator’s Committee had reached a consensus that such an opinion was not necessary at the time. The moderator also expressed the view that most conflict situations could be handled by the speaker simply by indicating the nature of the conflicting interest when addressing the RTM and that a vote on the subject matter thereafter would be permissible. As an attorney, the RTM member requesting the opinion indicated that this was contrary to the language of the Code and expressed the view that there had been abuses on this issue in the past and a concern that such abuses would continue.

Although not specifically mentioned in the request, the question was raised in advance of an RTM vote on a controversial \$2 million reduction in the Town’s \$144 million budget for FY 1990–91. The proposal included the elimination of 94 Town employee positions. The Board rendered its opinion prior to the vote on the issue.

**Question Presented:**

To what extent may an RTM member engage in discussion and vote on matters relating to Town actions or transactions in which he or she has a substantial financial interest?

**Discussion and Conclusion:**

The Board reconfirmed that, as an elected Town Official, a member of the RTM is a Town Officer, within the meaning of the Code.

Section 4 of the Code of Ethics prohibits elected or appointed officials, employees, consultants and agents of the Town from using their position as a Town Officer to exert influence or vote on matters in which they have a substantial financial interest. However, the Code of Ethics does not preclude persons from participating in Town government because of a potential conflict; it only prohibits participating in specific actions or transactions in which the individual has a substantial direct or indirect member who is or whose spouse is a paid employee of the Town of Greenwich may not vote on a labor contract of the bargaining unit representing such member or the spouse of the member. By contrast, in another opinion, the Board had determined that an RTM member who is or whose spouse is a paid employee of the Town of Greenwich may vote on the labor contract of a bargaining unit that does not represent such member or spouse. The Board has also permitted a member of the RTM to engage in discussions concerning a contract in which the member or spouse has an interest as long as that interest is fully disclosed prior to or at the time of such participation, although voting on such a matter was not condoned. In addition, the Board has permitted RTM members to vote on the adoption or rejection of the entire Town budget, even though it contained funding for a transaction in which the member or spouse had an interest, but has not permitted discussion or voting on a particular line item that the individual had a substantial financial interest in. For general guidance, the Board suggested that the principles underlying these decisions would be equally applicable to non-budgetary matters that come before the RTMct financial interest.

As guidance for members of the RTM, the Board summarized some of its previous opinions with respect to participation in discussion and votes in the RTM: In one opinion, it was determined that an RTM me.

## Statement No. 90-01

**Date:** 11/6/89

**Topics:** Advisory Opinions; Boards and Commissions; Commission on Aging; Services; Products; Marketing

**Code Section:** Section 4

### **Statement of Facts:**

A member of the Commission on Aging asked for clarification as to whether there would be any conflict of interest if the member were to pursue "business related to seniors." The commissioner gave extensive details about his past involvement as a volunteer, officer and director of various non-profit entities involved with the development and operation of group homes for the elderly in the Greenwich area. The commissioner also indicated that he had been "involved in marketing all of my business life" and indicated that "it would be a natural progression for me to think in terms of marketing products and services to this older group of people." Rather than give a more specific idea of what type of business activity this might involve, the commissioner asked for "guidance to my own judgment on anything that I might want to become involved in."

### **Questions Presented:**

How specific should a request for an Advisory Opinion be?

Is it permissible for a commissioner to vote on the expenditure of funds for a product or service that the commissioner has been involved in marketing?

### **Discussion and Conclusions:**

The Board did not provide a formal response to the Commissioner's vague request. The chair indicated that the Code of Ethics would obviously not prevent the commissioner from being involved in marketing products to the elderly outside of the Town of Greenwich. However, the chair cautioned the commissioner that he

should not use his position as a Town Officer to enhance business activities and should certainly abstain from discussion or voting on any vote in favor of allocating funds to pay for a product or service that the commissioner was promoting or otherwise involved with.

## July 1990 – June 1991

### Advisory Opinion No. 91-01

**Date:** 3/8/91

**Topics:** Gift or Favor; Vendors; Purchase of Goods by Town Employees

**Code Section:** Section 3

**Statement of Facts:**

While the Town was considering a proposal from a supplier to provide computer systems to a Town department, the head of the department asked whether it would be possible to purchase a system from the supplier for personal use. The supplier indicated that they would be willing to make systems available to the department head or any other employee of the Town at the same price that the systems were being sold to the Town, but suggested that there might be an ethical issue, inasmuch as the company had a proposal pending for approval of its systems by the Town. The department head then requested an Advisory Opinion from the Board of Ethics and indicated that the price to be paid by Town employees would be advantageous, but that the supplier had stipulated that the employee offer was “in no way tied to the approval” of the supplier’s systems by the Town and that it was “the same price offered to every city and town that we deal with.” The department head also indicated that being able to purchase systems for personal use that were the same as those used at work could assist employees in being able to perform their duties.

**Questions Presented:**

Does an offer to sell products to Town employees at the same price that the vendor is offering to sell products to the Town constitute a “gift or favor” that might tend to



influence the employees in the performance or non-performance of their official duties?

**Discussion and Conclusion:**

Section 3 of the Code of Ethics provides that:

“No town officer shall accept any valuable gift, thing, favor, loan or promise which might tend to influence the performance or non-performance of his official duties.”

The Board concluded that there would be no violation of the Code if employees in the department purchased them because the Town’s decision to purchase the systems would not be made by the employees of the department, but rather by the Town Purchasing Department after consultation with an independent computer consultant. The Board also noted that the offer to sell the systems to the employees was received after the department had recommended the purchase of the systems to the Purchasing Department. As a result the offer could not have influenced the recommendation made by the department and the advantageous price received by members of the department who elected to purchase systems in response to the offer could not influence the Town’s final decision on whether to purchase the systems.

**Statement No. 91-01**

**Date:** 6/27/91

**Topics:** Conflicts of Interest; Consultants; RTM members

**Code Section:** Section 8 (2)

**Statement of Facts:**

A new member of the RTM who was a civil engineer requested “some guidance from the Board of Ethics.” The member described a number of situations in which the member had refrained from voting, including appointments of various members

to commissions that the member's firm might appear before and a matter in which the member's firm provided surveying and engineering work to the Planning and Zoning Commission. The member also detailed the following items, which the member had not refrained from voting on: (1) an ordinance relating to waiting periods for demolition permits, which clients of the member's firm might apply for in the future, (2) a change in subdivision regulations, which also might affect clients, and (3) a request for a waiver by the commissioner of a Town department that occasionally retains the member's firm. The new RTM member also refrained from voting on an appropriation for a school reconstruction project, because the member's firm might have received \$2,000 from the project if it were retained by the architect. But, as a person that represented many people supporting the project, the member expressed regret about not being able to support a worthy project.

**Questions Presented:**

Should Advisory Opinions be addressed to persons who request broad and general advice as to future matters that aren't specified?

Should Advisory Opinions comment on factual situations that have already occurred?

**Discussion and Conclusion:**

The request involved either responding to historical events, which the Board might be called upon to adjudicate in the event of a complaint, or giving broad and general advice in the absence of knowing what specific conflicts might exist. The Board did not provide an Advisory Opinion. However, the chair met with the individual requesting the opinion and reported to the Board that he had advised the new member that the ethical sensitivity "seemed about right," although the member may have been overly scrupulous about the school building appropriation.

**See Related: A-09-03**

## July 1991 – June 1992

### Advisory Opinion No. 92-01

**Date:** 11/12/91

**Topics:** Conflict of Interest; Financial Interest; Spouses; Employment by Town

**Code Sections:** Section 4, Section 5

**Statement of Facts:**

The business administrator of a Town board is responsible for the budgeting, accounting, transportation and purchasing. Other than to report monthly financial results, the business administrator has no responsibility for food services, which is supervised by a separate food services supervisor. Both the food services supervisor and the business administrator report to the chief operating officer of the Board.

The administrator's spouse has expressed an interest in serving as a part-time food service worker, filling in when other workers are absent. The administrator requested both an Advisory Opinion as to whether there is any provision of the Code of Ethics that would apply to the situation and a "personal opinion" as to whether there might be any appearance of impropriety.

**Questions Presented:**

What provisions of the Code apply to the employment of a Town Officer's spouse by a Town board that the Town Officer also works for?

**Discussion and Conclusion:**

Section 4 of the Code of Ethics prohibits elected or appointed officials, employees, consultants and agents of the Town from using their position as a Town Officer to

exert influence or vote on matters in which they have a substantial financial interest. Since spouses have shared economic interests, each has an interest in the other's financial well-being. It does not appear from the facts as presented that the business administrator will participate in determining the conditions of the spouse's employment or salary. If there were circumstances in which these matters were to become part of the business administrator's responsibilities, the Board encouraged the individual to return to the Board to discuss ways to insulate the administrator from playing any role in these decisions.

### **Advisory Opinion No. 92-02**

**Date:** 11/12/91

**Topics:** Disclosure; Financial Interests; Immediate Family

**Code Sections:** Section 2 (a) (1), Section 5

**Statement of Facts:**

A Town commissioner filed a request for an Advisory Opinion as to whether a supervisor within the commissioner's department should be required to file a financial disclosure form covering transactions with the Town by a firm owned by the supervisor's brother-in-law.

**Question Presented:**

Is a brother-in-law considered a member of a Town Officer's immediate family for purposes of Section 5 of the Code of Ethics?

**Discussion and Conclusion:**

Section 5 of the Code of Ethics provides that each Town Officer having a "substantial financial interest" in one or more transactions with the Town must file a financial disclosure form stating the nature of the interest in the transaction and the

amount received from such transaction. Under Section 2 (a) (2) a “substantial financial interest” may be “direct or indirect.”

Section 2 (a) (1) defines “indirect” interests to include financial interests of immediate family members. Brothers and sisters are members of a Town Officer’s immediate family, since they can reasonably expect to rely on one or more parents, and on each other, for economic support. Since spouses share economic interests, they share in each other’s reasonable expectations of support from parents, brothers and sisters. Accordingly, the Board found that the immediate family of a Town Officer includes in-laws and that Town Officers are required to disclose interests of in-laws in their annual disclosure filings with the Town.

### Statement No. 92-01

**Date:** 2/7/92

**Topics:** Code of Ethics; Town Officers; Official Duties; Supervision of Employees; Town Officers; Aiding and Abetting; Theft of Property

**Code Section:** Section 4

**Statement of Facts:**

A member of the general public provided the chair with copies of a large quantity of correspondence between the individual and various Town Officers. The correspondence related to the individual’s efforts to secure the dismissal of the individual’s former spouse and the former spouse’s supervisor. In these documents, the individual called for the dismissal of the former spouse on the grounds that the former spouse was using time during working hours to harass the individual, had wrongfully conspired to prevent the individual from removing property that the individual was entitled to from Town premises and had falsified certain Town records and made slanderous charges as part of the harassment campaign, resulting in the individual’s false arrest.

The individual also called for the dismissal of the supervisor on the grounds that the supervisor had aided and abetted the former spouse in the campaign of harassment, resulting in a loss of services to the Town. However, no information was provided as to any specific action taken, or transaction with the Town, in which the spouse or the spouse's supervisor had a financial interest. Several days later, the individual provided additional documentation to be used at a meeting scheduled in the following week and thanked the chair for "placing me on the agenda," indicating that "I look forward to our discussion."

Just prior to the meeting, the individual was elected to the Representative Town Meeting and, several weeks after that, the individual announced the intention to sue the Town and various Town Officers for negligence and malfeasance in connection with the alleged campaign of harassment and slander.

At the meeting, the individual presented the Board with the following proposed amendment to the Code:

"No town officer of the town shall abuse the privileges, prerogatives or powers of his or her office to the detriment of another town officer or member of the general public. If there are ground[s] to believe that such abuse has taken place, the Board shall investigate the incident and render its opinion on the matter. If such abuse has been committed, it shall be grounds for termination of the employee who committed it."

**Question Presented:**

Should the Code of Ethics be amended to address abuse of power?

**Discussion and Conclusion:**

Subsequent to the meeting, the chair wrote to the individual indicating that the Board had carefully considered the individual's suggestion that the Code of Ethics be amended to cover abuse of power, and was of the opinion that the subject was more related to job performance and therefore better handled by Town managers than by amendments to the Code of Ethics.

## Statement No. 92-02

**Date:** 6/22/92

**Topics:** Voting; Town Officer; Jurisdiction of Board

**Code Section:** Section 8 (c)

**Statement of Facts:**

The Board of Ethics was requested by a member of the Board of Selectmen to advise the Board of Selectmen as to whether one member of the Board of Selectmen may act on behalf of another member of the Board of Selectmen at meetings where the other member sits in an ex-officio capacity.

**Question Presented:**

May the Board of Ethics advise the Board of Selectmen concerning matters that are not within the purview of the Code of Ethics?

**Discussion and Conclusion:**

Section 8 (c) of the Code of Ethics provides that the Board of Ethics may submit "additional reports, opinions and recommendations" to the Board of Selectmen at any time. Having been requested to opine on the matter, the Board concluded that representing and voting for the other member of the Board of Selectmen is a way of acting as an agent for another Town Officer. As such the member of the Board of Selectmen would be in effect holding another Town office, which selectmen are prohibited from doing.

## July 1992 – June 1993

### Advisory Opinion No. 93-01

**Date:** 8/6/92

**Topics:** Conflict of Interest; RTM Member; Non-profit Organizations; Board Members

Code Sections: Section 4, Section 2 (a) (1)

**Statement of Facts:**

A member of the Representative Town Meeting (RTM) who serves on the Board of a non-profit organization asked whether it would be improper to vote in the RTM on matters affecting that organization. There was no indication that the non-profit organization received funds from the Town. In addition, no information was provided as to whether the individual received any compensation for services from the organization, was a regular financial supporter of the organization or solicited contributions for the organization. However, the nature of the organization was such that the organization might be providing services that otherwise would be provided by the Town.

**Question Presented:**

Does being a member the Board of a non-profit organization that provides public services in the Town create a financial interest under the Code of Ethics?

**Discussion and Conclusion:**

Section 4 of the Code of Ethics prohibits elected or appointed officials, employees, consultants and agents of the Town from using their position as a Town Officer to exert influence or vote on matters in which they have a substantial financial interest.



Thus, no violation of the Code exists when voting on a matter in which an RTM member has no financial interest.

Section 2 (a) (1) of the Code defines indirect interest to include the interest of any person or his immediate family in any corporation, firm or partnership, which has a direct or indirect interest in any transaction with the Town. However, in the absence of showing that the RTM member received compensation from the organization, had a financial interest in the organization as a significant contributor, was responsible for contributing or soliciting funds, or that the organization received funds from the Town, the Board concluded that there was no indication of a violation of the Code and advised the RTM member that whether a conflict existed was a matter for the member to decide in each instance.

The Board applauded the member for making it a practice, when speaking of matters that might affect the organization, to “identify myself as a...Board Member”.

**See Related: A-96-01**

## July 1993 – June 1994

### Advisory Opinion No. 94-01

**Date:** 8/13/93

**Topics:** Definitions; Town Officer; Volunteers

**Code Section:** Section 2 (a) (3)

**Statement of Facts:**

The Fire Commissioner requested an Advisory Opinion as to whether volunteer firemen are considered Town Officers as defined in the Code.

**Question Presented:**

Are volunteer firemen considered Town Officers as defined by the Code of Ethics?

**Discussion and Conclusion:**

Section 2 (a) (3) defines Town Officer to mean and include “any official, employee, agent, consultant or member, elected or appointed, of any board, department, commission, committee, legislative body or other agency of the town.”

Currently, the Town exercises jurisdiction over volunteer firemen through the Fire Department and provides funds for the volunteer units through the Town budget. Consequently, all volunteer firemen are considered Town Officers within the meaning of the Code.