

Town of Greenwich

Board of Ethics



Official Reports

for

Fiscal Years 2015 -2017



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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. These reports supplement the volume: Greenwich Board of Ethics: Official Reports 1965 – 2012. Please refer to the Introduction of that volume for important additional information concerning the use of these reports.

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July 2015– June 2016

**There were no Complaints filed or Advisory Opinions rendered in the 2015-2016
Fiscal Year.**

July 2016 – June 2017

Advisory Opinion No. 17-01

Date: 5/09/2017

Topics: Bidding, Boards and Commissions, Commission on Aging, Disclosure, Town Contracts, Transactions, Undue Influence

Code Sections: Sections 4 and 5

Statement of Facts:

A member of the Commission on Aging (the “Commission”) requested this advisory opinion in connection with a request for proposals (the “RFP”) made by the Town on behalf of The Nathaniel Witherell (“Witherell”). Witherell is a Town department that operates a skilled nursing facility. It provides short term rehabilitation services, long term skilled nursing facilities and outpatient services, including physical, occupational and speech therapies. The federal government has mandated increased institutional involvement and oversight of patient outcomes by skilled nursing facilities like Witherell. Accordingly, in the RFP, Witherell is seeking a strong home health care provider to work closely with it to “brand” an “expanded

presence” for Witherell in the community, as well as to keep track of the outcomes of Witherell patients.

The member of the Commission (the Commission Member”) owns and manages a for-profit home health care services company (the “Company”) that has been active in the Greenwich area for many years. The Commission Member believes that the Company meets all eight of the minimum qualifications for bidders under the RFP, which require that the bidder focus on geriatric care; have at least five years of experience as a home health service agency; have the necessary certifications to serve as a home health care service agency and provide licensed medical home care services; demonstrate financial stability and growth; and currently provide services within the lower Fairfield County area.

The Commission Member has advised the Board that the Company provides services on a for-profit basis for existing outpatients and former inpatients of Witherell. Representatives of Witherell have advised the Board that no referrals of patients to home care service providers are permitted under federal law. Instead, patients are provided a list of potential providers and left to choose from among them. The Commission Member estimates that less than 5% of the Company’s clients are existing outpatients or former inpatients of Witherell.

In addition to managing the Company, the Commission Member has been active in local community affairs and has previously served as a member of the RTM and as a Board member of several local non-profit agencies. Appointed to the Commission over four years ago, the member has been actively involved in

planning, and securing resources to assist the Town in making, a needs assessment as part of an effort to have the Town certified as an age friendly and dementia friendly community.

The Commission consists of seven members appointed by the Representative Town Meeting upon nomination by the Board of Selectmen. The Commission was created in 1975 by resolution of the Representative Town Meeting and was established as an advisory and information gathering body pursuant to Section 7-127a of the General Statutes of Connecticut, with certain responsibilities for coordinating services for older adults and reporting to the State government. In 1982, as a result of a state-wide reorganization, Section 7-127a was repealed and the Commission's obligations to the State government were transferred to a regional representative. Since then, the Commission has continued to serve as a department of the Town, with Commission members having responsibility for oversight of departmental operations and for planning and coordinating Town services for older adults.

The stated primary role of the Commission is to be a community resource on issues affecting older adults. In this light, the Commission has worked primarily on educating and advocating on behalf of older adults and their families by conducting events, programs and activities. The Director of the Commission is a Town employee whose staff works directly with older adults and their families to assist them where needed in finding and coordinating resources and providing them with information and materials relating to their needs. The Director also runs a network

for providers of older adult services in the Town and oversees the operations of the Greenwich Senior Center. The Commission votes and gives input on its departmental budget and that of the Greenwich Senior Center as part of the Town's budgeting process. From time to time, it may also provide advisory assistance to the 1st Selectman and the Board of Estimate and Taxation with respect to other aspects of the Town budget relating to older adult services.

Commission members are assigned to work on various projects on behalf of the Commission, such as senior transportation, senior property tax relief, senior programming, etc. In this work, they may consult and advise Town agencies directly and participate in their decision making. The Commission also assigns its members to serve as liaisons to other Town departments, governmental committees and to cover events that are related to interests of older adults in Town. In this role, their responsibility is typically limited to observing and making reports. Departments and agencies covered in this way include Witherell and the Departments of Human Services, Human Resources, Information Technology, and Health.

Within the Commission, one of the responsibilities of the Commission Member has been to serve as liaison to Witherell. The Commission Member first became aware of Witherell's desire to explore a relationship with a home services provider in the summer of 2016. Along with several other home services providers, the Commission Member had informal discussions with Witherell representatives about possible alternative approaches. During the period where alternatives were

being evaluated, the Chair of the Commission was asked if members of the Commission could meet with a strategic planning committee of the Board of Estimate and Taxation to assist in reviewing plans relating to Witherell. At that point, the Commission Member declined an invitation to participate in the matter on the grounds that alternatives were being discussed within Witherell that might lead to a financial relationship with the Company. When Witherell subsequently determined to issue a request for proposals, the Commission Member delivered a written notification to the Chair that the Company might be involved in submitting a proposal and withdrew from the role of serving as liaison between the Commission and Witherell. The notification specifically requested that all other Commission Members and staff be advised of the potential interest and informed that the Commission Member would no longer be able to discuss Witherell matters with them.

The RFP asks the provider to 1) make an investment in the “Nathaniel at Home” brand’s startup, including hiring a full-time marketing director and producing marketing materials, 2) recruit and employ care givers who will work for the provider under the “Nathaniel at Home” brand, 3) marketing, public relations, legal and administrative costs, and 4) provide a business plan, including a three-year pro-forma budget of revenue and expenses. The RFP neither requires nor excludes revenue sharing between Witherell and the selected provider.

The Commission Member has indicated that the Company plans to make a proposal in response to the RFP that would include funding of the project by the

Company and the payment of a percentage of the net profit from the business line to Witherell. Therefore, the Commission Member has indicated that, if the Company is awarded a contract pursuant to the bid, annual disclosures would be filed under Section 5 of the Code of Ethics (the "Code").

The Commission Member has asked the Board if there would be any violation of the Code as a result of the Company either: 1) submitting of a proposal in response to the RFP or 2) entering into a contract as a result of being selected as the provider of the services requested under the RFP. At a meeting with the Commission Member, the Board also discussed the question of whether the submission of a proposal is a reportable transaction under Section 5 of the Code. In addition, the Commission Member has asked the Board to address whether continued participation in the activities of the Commission could result in a violation of Section 4 of the Code and what steps might be taken to avoid any appearance of a violation.

Questions Presented:

1. Must the Commission Member resign from the Commission in order for the Company to submit a proposal in response to the RFP?
2. Must the Commission Member resign from the Commission if the Company is awarded a contract in connection with the proposal submitted in response to the RFP?

3. If a contract is not awarded to the Company as a result of the RFP, would the proposal submitted by the Company be considered a transaction for purposes of the reporting requirements under Section 5 of the Code?
4. May the Commission Member continue to serve as the Commission's liaison to Witherell while the proposal is pending?
5. May the Commission Member continue to serve as the Commission's liaison to Witherell during the period of any contract that may result from the proposal?
6. In order to avoid any appearance of influence being exercised in violation of Section 4 of the Code, what best practices should the Commission Member follow in order to continue to serve on the Commission while the Company is involved in a transaction with the Town?

Discussion and Conclusion:

The questions raised by the Commission Member illustrate the degree to which the Greenwich relies on both openness and discretion on the part of Town Officers to achieve adherence to its ethical standards. By requiring Town Officers "having a substantial financial interest in one or more transactions with the Town" to file a written statement disclosing the interest, Section 5 of the Code clearly contemplates that Town Officers may enter into transactions with the Town. But Section 4 of the Code 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."

If Town Officers are permitted to enter into direct or indirect transactions with the Town, but are prohibited from exerting influence with regard to such transaction, one way of considering the question raised by the Commission Member would be to ask: Is it possible that the nature of a Town Officer's position could be such that a transaction could be influenced by the mere fact of holding it?

Although the Board has never addressed such a situation, it clearly seems possible that it could be the case. A Town Officer's position could be such that influence cannot be avoided, because ultimate responsibility for decisions affecting the Town transaction are inextricably linked to the individual holding the position. In such circumstances, resignation may be the only way to ensure that there is no appearance of influence. There could also be instances where a Town Officer's interest in the matters dealt with in the normal course by the person holding the position is so broad that it would be difficult to discharge the responsibilities of the position properly without the appearance of a conflict. See *e.g.*: *Advisory Opinion 04-02*.

With the care taken by the Commission Member in this instance to insulate the Commission from influence, however, resignation does not seem to be necessary. It is significant to note that there are many areas of responsibility where the Commission Member can provide valuable assistance to the Commission unrelated to Witherell matters and that there are a number of other members of the Commission who can serve as liaison to Witherell.

The Board has previously indicated that Town Officers do not need to resign their positions in order to engage in Town transactions as long as appropriate steps are taken to ensure that Town actions and transactions are not influenced by the Town Officer and the Town Officer does not participate in any votes concerning the actions or transactions. See *Advisory Opinion 90-01* (member of Tax Review Committee of RTM employed by Housing Authority), *Advisory Opinion 98-02* (RTM member serving on Board of local non-profit), *Advisory Opinion 01-02*, (member of the Inlands, Wetlands and Watercourses Agency involved with non-profit applying for an approval), *Advisory Opinion 02-05* (employee of custom home builder serving on Planning and Zoning Commission). These opinions indicate that the existence of the interest need not require the Town Officer to resign in order to participate in a transaction with the Town. But they also confirm that appropriate procedures should be followed to insulate the Town Officer from the opportunity to influence the transaction.

The Commission Member, together with the Chair of the Commission, has requested a separate advisory opinion. This opinion will address more fully the procedures that the Commission can adopt to insulate itself from influence by members who have a substantial financial interest in Town actions or transactions. In addition to the steps already taken to insulate the Commission Member from involvement with Commission deliberations and votes when dealing with Witherell matters, it is anticipated that the Commission Member will also follow any future conflict of interest procedures adopted by the Commission. Accordingly, the Board

is comfortable advising the Commission Member that it is not necessary to resign from the Commission in order to submit a proposal responding to, or to enter into a contract resulting from, the RFP.¹

In connection with future compliance by the Commission member with the requirements of the Code it is noted that Section 2 of the Code defines “transaction” as used in the Code as follows:

“Transaction shall mean and include the offer... of any ... 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...”

The RFP has been issued by the Town Purchasing Department. The Board assumes that a proposal made under the RFP will represent an offer to provide services to Witherell in exchange for more than nominal consideration. As a not-for-profit entity operated by the Town as a means of providing services to its residents, contracts with Witherell are contracts with the Town. Accordingly, both the proposal made in response to the RFP and any contract resulting from that proposal will be for the use and benefit of the Town and would therefore be required to be reported under Section 5 of the Code.

As mentioned above, a separate advisory opinion request has been made on behalf of the Commission which is intended to assist the Commission in establishing safe harbor procedures for Commission Members to use in dealing with matters in

¹ In finding no per se violation of the Code resulting from the submission of a bid, the Board expresses no opinion as to whether the Company meets the qualifications for bidders established under the RFP, which is outside the jurisdiction of the Board.

which they have substantial financial interests. The Board commends the Commission Member for following the procedures previously recommended by the Board in its advisory opinions in order to avoid conflicts of interest. In particular, we confirm the appropriateness of turning over the role of liaison to Witherell to another member of the Commission.

As a general matter, the Board would not be inclined to find a violation of Section 4 of the Code where the following procedures have been instituted by the applicable agency, board, commission, committee or other multi-member body and followed by the Town Officer in question:

1. A set of written guidelines is established for identifying and handling substantial financial interests in Town transactions or actions.
2. Upon commencement of their term of office or employment, members and employees are required to disclose in writing the existence and, in reasonable detail, the nature of any Town transactions or actions that the body deals with that they have at the time, or might have in the future, a financial interest in.
3. Periodic written disclosures are required to be made as appropriate to update the initial written disclosures.
4. Reports of such disclosures are made to the other members and any staff expected to be involved in any Town transaction or action related to the interests disclosed, together with instructions to avoid discussion of the issues with the member involved.

5. As soon as practicable after becoming aware of any substantial financial interest in a particular Town transaction or action that they may be called upon to discuss, vote on, approve or otherwise become involved with, members are required to promptly disclose such interest in writing and in reasonable detail to all appropriate persons and to abstain from any discussion or voting on the transaction or action.

Of course, the circumstances applicable to each particular Town department or other entity will be different, and appropriate modifications and clarifications to the above guidelines will need to be made. We look forward to working with the Commission on such modifications and clarifications as they relate to the Commission.

See Related: A90-01, A98-02, A98-03, A01-02, A02-05, A04-02, A05-01, A07-01, A09-04, A12-01

Decision No. 17-01

Date: 5/25/2017

Topics: Department of Parking Services, Gifts, Supervisory Responsibility, Town Action, Transaction, Undue Influence

Code Sections: Sections 3 and 4

From an email address identifying itself as “greenwichresident”, the Board of Ethics received a message stating that the sender was making a “formal complaint”. It was alleged in the message that a “valuable gift” had been given to the Director (the “Director”) of the Department of Parking Services (the Department) “for voiding one or more parking tickets.” The message named a member of the Representative Town Meeting (the “RTM Member”) as the person giving the gift, gave the approximate dates that the parking ticket was tendered to the Director and the gift was given, and identified the gift as a set of chairs. The message also attached images (which were apparently taken by the Department’s security cameras or by a Departmental employee) of the RTM Member carrying an antique chair into the Director’s office and of what appeared to be a similar chair in the office.

DUE PROCESS CONCERNS

Counsel for the Director has raised an objection to the Board's consideration of an anonymous complaint on the grounds that the Director may be denied the due process right to confront an accuser. Although it may be appropriate to raise this concern as early as possible, due process rights in a civil proceeding are different from those accorded under the 6th Amendment in criminal cases. A 6th Amendment style application of the concept to the Board's review of a complaint would misconstrue the role of the Board and treat complaints as if they were formal charges of the type made in a criminal case after an investigation has been completed.

The Greenwich Code of Ethics (the "Code") does not require complaints to be made by an identified complainant. This is evident not only in the fact that it provides no formal requirements for a complaint (even a provision that the request be in writing, which it does require for advisory opinions), but also because it does not require a complaint to be made by a citizen of the Town or any other identified type of individual. At the same time, the Code charges the Board with the responsibility to *investigate* complaints; it is not permitted to simply adjudicate the merits of a charge brought by a third party. Thus, it is the Board's clear duty to investigate any serious allegation of a breach of the Code, regardless of the form in which the complaint is received or whether it can identify the source of the allegation.

It is also important to note that the Board's jurisdiction is limited to actions by Town Officers. The Code has no application to persons who are not employees or elected or appointed officials of the Town.² In this sense, the Board's operations are

² The provisions of the Code are incorporated into many Town contracts, but these would normally be enforced by the Town in Superior Court, not by the Board of Ethics.

clearly part of the internal administration of the Town, even though they are directed toward assuring that Town government enjoys public confidence and trust.

The Board is sensitive to the possibility of unnecessary reputational harm that can be caused by a public investigation of unfounded complaints. Accordingly, it has adopted procedures that call for all putative complaints to be reviewed carefully by the Board. In addition, these procedures require the Board to undertake, before commencing public hearings or releasing any information concerning a complaint, a confidential preliminary investigation to ensure that there is probable cause to believe that a violation of the Code may have occurred.

The Board's procedures protect a respondent from being publicly exposed to wholly unsubstantiated allegations by an anonymous accuser. The Board evaluates the credibility of every complaint by developing corroborative evidence. In appropriate circumstances, the Board may also solicit information from the respondent in order to better evaluate that evidence and ensure that it has properly considered any mitigating or exculpatory circumstances. It is only after a determination of probable cause that the Board commences public hearings with respect to a complaint. In those hearings, the Board's procedures provide the respondent with a full opportunity to confront the evidence that supports the Board's determination of probable cause.

The Board is also sensitive to the due process rights Town employees have in connection with their employment status. Section 6 of the Code provides that a

determination by the Board that the Code has been violated will, upon recommendation by the Board, “constitute good and sufficient cause for proceedings for [a Town Officer’s] removal from office.” It is important to note, however, that the Board itself is not given the authority to discharge Town employees or remove elected or appointed officials from office. This is reserved for the proper authorities after full consideration of the Board’s determination and all other relevant factors. Thus, an investigation by the Board should properly be seen as only a preliminary step in any proceeding affecting a respondent’s right to work.

In *Morrissey v. Brewer*, 408 U.S. 471 (1972), the United States Supreme Court has indicated that the nature of the (4th Amendment) due process right of confrontation depends on the stage of the proceedings. Courts have also recognized that the degree to which due process rights apply to administrative proceedings depends on nature of the proceedings. Thus, in an administrative proceeding where a governmental body, such as the Board, is charged with responsibility for evaluating reports by whistleblowers, courts have recognized that the right to confront an accuser does not prevent the governmental body from taking appropriate steps to protect the accuser from fear of reprisals.³ Accordingly, the Board has determined that the due process rights of the respondent in this case, including any right of confrontation, were properly respected.

³ See e.g.: *E.J.S. v. State, Dept. of Health & Social Services*, 754 P.2d 749, 752 (1988), *Ohio Association of Public School Employees, et al. v. Lakewood City School Dist. Bd. of Education.*, 624 N.E.2d 1043, 1047 (1994).

THESE PROCEEDINGS: REVIEW OF THE COMPLAINT

Review of the message as a possible complaint was within the jurisdiction of the Board because it concerned Town Officers and Town action. Accordingly, the Board reviewed the message carefully and found that the facts alleged, taken at face value, contained all the elements of a violation of Section 3 of the Code, which prohibits any Town officer from accepting “any valuable gift, thing, favor, loan or promise that might tend to influence the performance or nonperformance of his official duties.” As to the Director, the message alleged that a valuable gift (the chairs) had been given in return for the voiding of a parking ticket, which is an official Town action. It therefore met the threshold requirements of the Code for consideration as a complaint.

To be considered a complaint under the Code, a submission to the Board must allege each of the elements of a violation of the Code. A vague general accusation that a Town Officer has violated the Code is not sufficient. In its Statement of Procedures and Rules of Conduct, the Board has articulated several additional criteria that also must be met. A complaint is required to contain enough detail to allow the Board to determine the specific Town actions or transactions involved and enough information about the circumstances for the Board to be able to conduct a productive inquiry into the matter. In the case of an anonymous submission, this requirement of specificity is particularly relevant since the Board has no ability to contact the complainant to supply additional information. In addition, the Board also considers the appropriateness of conducting an investigation into the matters alleged to ensure that the human and financial costs of conducting the investigation do not significantly outweigh the benefits obtained by the Town.

During an executive session held on December 9th, 2016, after careful consideration of all the above factors, the Board determined that the message it had received concerning the activities of the Parking Director, evaluated without regard for the truth or accuracy of the allegations it contained, met the formal requirements for a complaint of a violation or violations of the Code. Accordingly, the Board was required to commence a confidential preliminary investigation to determine if there was probable cause to believe that a full investigation of the matter would result in a finding that one or more violations of the Code had in fact occurred.

Because the complaint was found to involve allegations against two Town Officers, the Board's preliminary investigation necessarily involved both Town Officers. Thus, the Board conducted its preliminary investigation and interviewed the respondents as a part of the same proceeding. Ultimately, however, the Board decided to consider the case of each respondent separately and to render separate decisions with respect to each.⁴

STATEMENT OF FACTS

During its preliminary investigation, the Board established a number of pertinent facts relative to the allegations in the complaint. Because the complaint was anonymous, care was taken to protect the confidentiality of the respondents

⁴ Subsequent to the Board's determination that the allegations in the email message should be considered a complaint, the Director engaged the law firm that employs the niece of Mr. Robert Sisca, who is a member of the Board. As a result, Mr. Sisca withdrew from participation in the preliminary investigation of the complaint did not participate in the drafting, discussion, consideration or approval of this decision.

and to expand the scope of the investigation only by measured steps as justified by the production of credible and verifiable evidence.

Review of Parking System and Police Records. To begin the preliminary investigation, the Board first obtained independent reports from the Town's parking violations system database to determine if they supported the allegations made in the anonymous complaints. These indicated that the RTM Member had in fact received a ticket on the evening of August 3rd, 2016. The ticket was manually issued by a police officer for parking "not in a legal space" at the Island Beach parking lot at 8:40 PM. System records further indicated that the fine was \$55, that penalties had accumulated in the amount of \$110, and that the entire \$165 had been "conditionally discharged" by the Director for "officer error" on September 14th.

A dispatch report for August 3rd indicated that the police received a call about a van that was being blocked from leaving the Island Beach parking lot and had dispatched a patrol car at about 8:30 P.M. The officer responding to the call issued six notices of violations to illegally parked cars, one of which was to the RTM Member. Later review showed that a fine had been paid in every instance⁵ except the violation issued to the RTM Member and that the RTM Member did not have any previous violations listed in the database.

The parking violations database also recorded that a notice had been mailed to the RTM Member on September 14th. The notice was under the name of the Director's predecessor. Moreover, the copy that the Board received did not contain any indication of the disposition of the ticket or explanation of the reason for the

⁵ In two instances the fine was reduced to \$20 and \$50, respectively. In another instance the accumulated penalties for non-payment were reduced from \$110 to \$55.

notice to be sent. The Director subsequently indicated that the notice was sent out by the vendor that maintained the violations system for the Town and that “the computer didn’t populate” the appropriate data to the form, adding that it was “a common problem.” The RTM Member didn’t recall receiving the notice.

Interview with RTM Member. During an interview with the Board, the RTM Member stated that the notice of violation had been brought to the attention of the Parking Director, but only to question whether it was consistent with Town policy because there were many other cars similarly parked that evening. If the ticket was appropriate, the RTM Member said it would be paid, or, if inappropriate, submitted through the normal appeal process. Apparently, there was a further conversation about the matter sometime thereafter. By the time the chairs were delivered, however, the RTM Member stated that the notice of violation had been forgotten about and was not discussed.

As to the chairs, the RTM Member said that it was a hobby to fix up old furniture, and these had been found at the dump. They only required light restoration, involving a modest amount of gluing and refinishing and had been offered to several people, but they had all had turned them down. So by the time they were delivered to the Director’s office, the RTM Member was anxious to get rid of them and saw little value in them except for their functionality in providing additional seating options for the office.

Interview with Director. Although there were some differences in recollection, the Director confirmed in an interview the essential elements of the RTM Member’s account of the matter, such as the fact that the ticket had been surrendered within 15 days and that there was at least one follow-up conversation about the matter. The

Director recalled telling the RTM Member that if the ticket was inappropriate both the fine and any penalties would be voided even if the determination was made after the penalties had been accumulated.

The Director indicated that the Town employees are encouraged to be “consumer-friendly”. In the Department, this has led to a series of policies and “unwritten rules” that apply both to the enforcement of parking regulations and to the processing of contested tickets, which were in place when the Director was hired. As an example of a consumer-friendly policy, the Director maintains an “open door” policy, where any member of the general public, merchants and visitors can drop in to complain about parking tickets or policy or any other parking related policy if the Director is not otherwise occupied.

One of the unwritten rules of the Department is to be more lenient in enforcing parking tickets when there is a surge in parking demand because of Town events held at times that are not during normal business hours. Therefore, the Director investigated the matter of the RTM member’s ticket by calling the Parks and Recreation Department to confirm that there had been event an event in Roger Sherman Park that evening. The Director’s investigation did not include contacting the Police Department, however, even though the reason given for discharging the fine and penalties was “Officer Error”.

According to the Director, members of the Police Department are not as well suited for giving parking tickets as the enforcement officers employed by the Parking Services Department because the Police Department does not have the specialized equipment that records images to assist in verifying the accuracy of challenges. In addition, there seems to be an appreciation in both the Parking

Services Department and the Police Department that the time needed to be spent to defend a parking ticket in person is both disruptive of patrol schedules and not a productive or efficient use of police officers who are highly trained in other areas more vital to the safety and security of the Town. Accordingly, the Director reported that it is both quite uncommon for police officers to write parking tickets and quite common for tickets written by police officers to be voided by staff of the Department. Another of the unwritten rules of the Department appears to be that tickets written by police officers are less reliable than those written by parking enforcement officers due to the lack of photographic evidence⁶.

The Director indicated that there is normally no communication between the Department and the police concerning the disposition of tickets written by police officers. In the case of the RTM Member's notice of violation, this was confirmed by the Chief of Police and the officer writing the ticket. According to the Director, neither parking enforcement officers nor police officers are evaluated for their performance relative to tickets discharged for officer error. The Director indicated that this is in part due to the fact that the code for officer error is used by default for a wide variety of circumstances where there is no other code that accurately describes the reason for the discharge.

In the view of the Director, the RTM Member was treated no differently than any other member of the general public in being able to approach the Director directly and request that the matter be looked into. When the Director saw that the

⁶ The Town's Parking Enforcement Officers have a sophisticated ticketing system that allows for photographs that support and substantiate any disputes or questions of the validity of the violations. The Department, whether through a hearing or in the office, has voided a high number of handwritten tickets in comparison to electronic tickets due to lack of evidence (photographs).

ticket was issued after the normal time for tickets to be issued by Departmental employees and was written by a police officer at a time when it was later confirmed that a Town event was taking place at a nearby park, the Director believed that there was ample justification for voiding the notice of violation. The fact that the reason given was "Officer Error" was due to the lack of space the parking violations management system software allows for recording broader explanations.

According to the complaint, the RTM Member delivered the chairs around the 6th of September, while the parking violations system records the fines and penalties as being discharged on September 14th. The Director seemed genuinely uncertain, however, as to whether the chairs were received before or after the discharge occurred. What did seem clear from the interview is that the Director's determination that the discharge was appropriate was made prior to the time that the chairs were delivered even if the discharge was entered into the system sometime later.

What is unclear to the Board is the authority for the Director to discharge fines and penalties in the first instance. Except to the extent that it may fall under the general authority to supervise collections in Section 122 of the Greenwich Municipal Code, the only direct authority for discharge that the Board has found is in Section 34-14 (c), which reads in pertinent part as follows:

Any person wishing a hearing to contest the validity of such notice may appear in person within 15 days of the issuance of such notice at the Parking Violations Office of the Police Department and shall be given at that time a hearing date before a parking violations hearing officer appointed by the First Selectmen[sic]... Said officer shall announce his decision of the validity or invalidity of the notice at the end of the hearing directly to the

contesting person and shall certify said decision on the same day to the Parking Violations Office of the Police Department.

In the absence of an appearance on the appropriate hearing date, Section 34-14 (c) provides that a notice of violation is presumed to be valid. This suggests that contests are expected to be made only in the manner described in Section 34-14 (c). However, the Director indicated that the authority to discharge fines and penalties is in the job description of the Director.

The procedure for contesting parking tickets described on the Department of Parking Services pages on the Town website seems to follow the procedure outlined in Section 34-34 (c). But it dispenses with the requirement that the individual contesting a notice of violation appear at the Police Department. Instead, a person who wishes to contest a ticket is directed to the site of the Town's on-line collections vendor, who offers (but does not guarantee) to forward a request for a hearing to the Department. There is no indication that contests can be submitted in person to an employee of the Department without applying for a hearing, nor is there any information about what the grounds are typically considered an appropriate basis for requesting the voiding of a notice or discharging or modifying fines or penalties.

When interviewed by the Board, the Director stated that the practice of having all contests resolved by a formal hearing had been abandoned years ago, as the number of contests became too numerous to handle cost efficiently, even with the use of volunteer hearing officers. This situation may have resulted in part from the high number of contests that Greenwich experiences relative to surrounding municipalities. The Director indicated that, even with most of the contests being handled directly by staff within the Department and the use of ticket issuing devices

that can capture images of the illegally parked vehicles, the discharge rate for notices in Greenwich is well above 35%, while the average for surrounding communities is well below 10%.

When questioned about provisions of the Code, the Director expressed some vagueness and uncertainty, apparently believing that the Code contained a \$100 exemption for gifts and unaware that the Town's Human Resource Policy Manual limits gifts to Town employees from a single source to \$25 per annum. In fact, the Code contains no dollar limit under which gifts are acceptable. While the Board has indicated that it will defer to Town's assessment that \$25 per year is not likely to influence an employee's performance, it has also made it clear that compliance with the Code is measured, not by a dollar limit, but by the totality of the circumstances.

The Board also questioned the Director about training in the area of ethical concerns and learned that the Director had received no particular training with respect to the Code of Ethics, either upon hiring or as a part of periodic ethics training, and had not been given a copy of the Code or any information concerning the Board's Advisory Opinions. The Director also was not required to provide training to other members of the Department about the Code of Ethics or the Town's Standards of Conduct.

An internal audit by the Town, conducted prior to the Director's employment in 2014, identified issues with the Department's procedures and internal controls, which the Director indicated have also contributed to the high voiding rate and other problems. The Director stated that a concerted effort has been made to address these issues, including the need to put pressure on the Department's employees to change poor practices that they had become comfortable with over the years.

Accordingly, the last few years have been stressful for the Department. The Board has been advised that further audits have been performed and additional controls and procedures are being implemented. The Board has little doubt that these will address many of the concerns that the Board has identified in the course of its preliminary investigation.

FINDINGS

The Board has carefully reviewed and investigated the complaint with the full cooperation of the Director. As a result of its investigation, the Board has developed the above statement of facts and a made determination of the existence of probable cause, which the Director does not disagree with. Based on its factual determinations, the Board has made findings and recommendations. Since the Director has agreed to its statement of facts based on the preliminary investigation and consented to its recommendations⁷ as set forth below, the Board has determined that no further investigation of the complaint is necessary.

Because of the forthright manner in which the Director cooperated in the Board's investigation of the complaint and in the absence of any evidence to the contrary, the Board accepts the Director's assertion that the RTM Member's fine and penalties were discharged in accordance with longstanding practices of the Department and for reasons that appeared to be sufficient at the time, even though they may not appear to be particularly compelling to the Board in hindsight. Therefore, we do not find that the chairs that the RTM Member donated for use and

⁷ The Board recognizes that the Director's consent to the recommendations of the Board is limited to acting within the confines of the Town and the Town may in fact disagree with such recommendations.

disposition in the Director's office were likely to have influenced the Director's decision to discharge the RTM Member's fine and penalties. This would be necessary in order for us to find the Director in violation of the Code.

By accepting the Director's explanation that the chairs were not influential in the decision to discharge the RTM Member's fines and penalties, the Board is not, however, accepting the curious logic by which the Director considers the RTM Member to have been treated in the same manner as any member of the general public. This would only apply if qualified by the addition of "who complains." In fact, there were five other members of the general public who were not treated the same as the RTM Member, apparently unaware of the unwritten rules of the Department that discourage enforcement of parking policy during Town events and consider tickets written by police officers inherently unreliable.

Armed with knowledge of the unwritten rules and an awareness of the Director's open door policy, each of the other five persons receiving tickets at the lot that night presumably would have paid the Director a visit and been entitled to have their fines and penalties discharged. Not only would this encourage them to illegally block access and entry to parking lots in future, it would encourage others to approach the Director for similar relief. This can only further create the appearance of favoritism, since it will not take long before the Director is forced to turn some applicants away in order to have time left to administer the Department, leaving them to wonder why others were granted access to the "open door."

The Board is constrained to say that the longstanding practices of the Department under which the RTM Member's fine and penalties were discharged seem to have developed in an environment that is somewhat insensitive to the

ethical concern about favoritism that is reflected in the Code. In this respect, the Director may have lost an opportunity to lead by example. Town employees frequently find themselves in situations where it is necessary to decline a small gift or favor in order to comply with the Code, perhaps at the risk of offending an individual who is sincerely appreciative of their work. Similarly, they must refuse to grant favorable treatment to family and friends and other persons who are in a position to express their appreciation in a tangible way. Sensitivity to this concern by supervisors helps to instill the ethic that maintains the reputation of the Town for integrity at all levels.

Since there is no one responsible for routinely reviewing the performance of the Director in discharging fines and penalties, the mere act of seeking a supervisory level review of a notice of violation suggests a desire for favorable treatment. While we believe that an open-door policy by the Director with regard to the general public is a positive aspect of the Town's effort to be "consumer friendly", we don't believe that it should include independent action by the Director to discharge or modify fines or penalties for violations of the Town's parking regulations. The Director has conceded that better procedure would be for the Director to refer persons justified in contesting a notice of violation to an appropriate hearing officer or staff member, with an invitation to advise the Director if the disposition is unsatisfactory, so that the Director could then review the independent disposition. This is more consistent with the supervisory nature of the Director's position. It should only improve the ability of the Director to provide good customer service to the public by relieving the Director of the considerable groundwork necessary to properly investigate and resolve contested notices of violations. It also avoids the natural assumption, by outside or even inside observers, that those whose matters are being handled by the Director personally are receiving preferential treatment, as

compared to those whose matters are being treated by lower level staff or volunteers.

The Board is also constrained to say that it does not accept the Director's explanation that the acceptance of the chairs was only an acceptance of a gift on behalf of the Town. Just as the Director should not, as a supervisor, discharge violations in the first instance, the Director should not consider that accepting property on behalf of the Town is a matter that can be done *sua sponte*, without the involvement of the Town officials responsible for keeping track of and maintaining such property. Just as the ability to leapfrog to the attention of a departmental supervisor suggests preferential treatment in the handling of a violation, the fact that no other department of the Town needed to be involved in the acceptance of the chairs should have suggested to both the Director and the RTM Member that the chairs were a personal gift to the Director, to be used of and disposed of at personal whim. The fact that the Director disposed of the chairs after the Director received notice of the complaint, without the need to consult other Town employees, further reinforces this conclusion.

The Board also does not agree with the Director's assertion that other gifts, such as food and flowers, that are received by Town employees from vendors for use or consumption in the workplace, should be considered exempt from consideration under the Code. A gift of flowers received by a supervisor in the workplace is no less personal if received from a Town vendor than it is if received from a spouse or other friend or admirer. There are obviously circumstances in which food or other supplies are a necessary part of a vendor's services and others in which a gift, such as a box of cookies, would obviously not approach the \$25 annual gift allowance if the value is allocated on a per person basis within the department it is given to. But the Board would not like to think that such practices

are taken lightly. There should be no general understanding on the part of Town employees that any gift of property received in the workplace is made to the Town and is therefore exempt from the Town's usual ethical standards and requirements. All such gifts should be subject to strict scrutiny for adherence to the Code and any Town vendor offering inappropriate gifts should be reported to the proper authorities for possible violation of contractual obligations.

Although the RTM Member recollected asking the Director if the chairs would be a welcome gift before bringing them into the office, the Board finds more convincing the Director's expression of being nonplussed when the RTM Member arrived with the chairs unannounced. We had the impression that the Director might have accepted the chairs out of an understandable desire on the part of an embattled Town supervisor not to offend another Town Officer. But it would have been more appropriate if the Director had demonstrated better judgment at the time and rejected the offer of the chairs with the stated goal of avoiding any appearance of impropriety. By failing to reject the chairs, the Director missed a chance to set a good example for the employees of the Department and provided an opportunity for just the kind of criticism articulated in the complaint.

It is not the Board's responsibility to make recommendations about how the Parking Services Department should be managed. It is the role of the Board, however, to advise Town Officers about how best to avoid the appearance of favoritism, cronyism and other conflicts that may be perceived as violations of the Code. In this respect we must comment on an apparently longstanding failure by the Department to adopt standards and controls that would help prevent actual or perceived violations of the Code from occurring. An environment where an informal system of handling contested notices of violations exists side-by-side with a

formal authorized structure creates an appearance of favoritism that is only magnified when the informal determinations are made according to unwritten rules.

The Board verified that the Director is only responsible for a tiny fraction of the notices of violation that are discharged or voided in a given year. This background attenuates the credibility of the complaint. But the complaint seems to have been made by a person or persons who appreciated that any instance in which the Director voids a ticket personally can look suspicious when the person to whom the ticket has been issued is another Town Officer. This is even more likely when the Town Officer is a member of the RTM who has been involved in recent discussions of parking policy with the Director. Even if the vote of a member of the Representative Town Meeting is only one of many, it must be kept in mind that the Representative Town Meeting is a deliberative body where a single voice can be persuasive in shaping the outcome on any matter and that the Representative Town Meeting's responsibilities on behalf of the citizens of the Town are very broad.

We have been apprised of the hard work and dedication that the Director has exhibited in trying to implement proper standards and controls within the Department, but there is apparently more work to be done. The Director indicated that the Department's software system frequently does not provide accurate details of the reasons for discharging fines and penalties to be recorded and conceded that incorrect or incomplete communications can be mailed out by the systems' vendor without any review. Presumably this is because there is no customized set of codes that correspond to the actual operations of the Department. It has also apparently been difficult to replace the name of a long-retired supervisor or make other appropriate changes on the forms by which the Department communicates with the public. If there are limitations on the system that prevent these issues from being corrected, the system should be modified or replaced.

We appreciate the Director's attempt to respond to the complaint as constructively as possible. The Director cooperated with the Board in its preliminary investigation, addressed the allegations substantively, conceded the possibility of errors in judgment and considered alternative ways in which the matter could have been handled. We have been assured that no efforts have or will be made to identify or to retaliate against the person or persons who may have been responsible for the complaint being filed.

RECOMMENDATIONS

The Board recognizes that the Director has been working with the 1st Selectman and the Department of Internal Audit to improve the internal controls and strengthen the procedures of the Department. In that process, many of the issues identified in this decision have been or are in the process of being addressed. In particular, we have been advised that the Department has already taken steps to implement the recommendations made in paragraphs 2, 5, 7 and 8 below based on the findings and recommendations of the 2016 internal audit of the Department.

A necessary focus of these efforts has been to enable to the Department to operate more efficiently and maintain a high degree of integrity in the revenue collection process, while the focus of the Board's recommendations has been the adoption of procedures and controls that ensure compliance with the Code of Ethics, Therefore, even though they may overlap with the initiatives already underway, the Board feels it is appropriate to place its own recommendations on the record, since they may provide guidance for other Town Departments with respect to their efforts to ensure compliance with the Code .

Accordingly, the Board makes the following recommendations to the Selectmen and the RTM:

1. With the concurrence of the 1st Selectman, steps should be taken to ensure that the job description of the Director is changed to indicate that the Director's role in voiding, discharging or otherwise adjusting fines for violations is strictly to supervise the hearing officers and employees authorized to take such actions and to correct mistakes when made, with appropriate records kept of the reasons for such corrections.

2. A determination should be made as to whether employees of the Parking Department are or should be authorized to discharge fines and penalties and whether the process for contesting notices of violations should be set forth in the Town Municipal Code or left to the discretion of the Department. The existence of an appeal process other than the one provided for in the Town Municipal Code or described on the Town website increases the possibility that there may be an appearance of favoritism in connection with fines or penalties discharged in a more informal way.

3. The Director should receive training in the application of the Code and the Town's Principles of Behavior and Standard of Conduct, which should include consideration of specific situations in which these might apply to the Department of Parking Services as well instruction on how to integrate these ethical standards into the ongoing training of the Department's employees. Consideration should be given as to whether additional training of this type would be useful for other supervisory employees of the Town.

4. All employees of the Department should receive additional training with respect to their obligations under the Code and the ethics provisions of the Human Resource Policy Manual. Consideration should be given as to whether all Town employees should receive additional ethics training with respect to the receipt of gifts in the workplace.

5. The Department should adopt a uniform procedure for qualifying persons to act as Hearing Officers with authority to discharge fines or penalties associated with notices of violations. This should include a review of qualifications, a written recommendation by the Director and approval by the First Selectman, and a fixed term of office.

6. All Hearing Officers should be subject to periodic performance reviews. Any consideration of reappointment should include evaluation of the performance reviews approved by the Office of the First Selectman.

7. The Department should evaluate its practices for adjudicating violations and ensure that a single set of detailed guidelines is available for use by all Hearing Officers that properly reflects all such practices. These guidelines should be evaluated and revised periodically to conform to changes in the Department's operations.

8. The Department should adopt written procedures for voiding notices of violations or discharging or modifying fines and penalties and publish a description of these procedures on the Town website. These procedures should include the criteria applied to determine if a contest should be upheld. These should be consistent with the Greenwich Municipal Code, as it may be revised.

9. Methods should be evaluated for establishing lines of communication with the Police Department that allow for a productive exchange of relevant information without unduly burdening operations. No notice of violation should be voided or discharged for officer error without notifying the officer involved and appropriate supervisory personnel.

10. The Director, with the assistance of the Department of Law, should make recommendations to the Selectmen and the RTM to make sure that the practices of the Department are consistent with the Municipal Code, so that: (a) the authority for Departmental employees to discharge violations is clarified, (b) the procedures currently in use to contest tickets are more clearly authorized and the circumstances under which employees and hearing officers have discretion to discharge violations are more clearly defined and (c) records of the disposition of contested violations are required to be maintained sufficient to permit reviewing authorities to ascertain the reasons for any discharge or modification of penalties in any particular case.

11. With the assistance of the Department of Human Resources, the Director should re-examine the Code, the material in the Human Resources Policy Manual of the Town of Greenwich and the ethics materials posted by the Board on the Town website in order to: (a) understand better personally the application of the Code and other Town ethics policies to the operations of the Department, (b) develop materials to integrate ethics training into the training programs for Departmental employees and (c) make recommendations to the Board of Ethics and the Department of Human Resources, based on personal experience, as to how the Policy Manual, web based resources and training programs for Town employees generally can be

improved so as to ensure a high level of ethical conduct by Town employees at all levels.

Decision No. 17-02

Date: 5/25/2017

Topics: Gifts, Representative Town Meeting, Town Action, Transaction, Exerting Influence

Code Sections: Sections 3 and 4

On September 19th, 2016, from an email address identifying itself as “greenwichresident”, the Board of Ethics received a message stating that the sender was making a “formal complaint.” It was alleged in the message that a “valuable gift” had been given by a member of the Representative Town Meeting (the “RTM Member”) to the Director of the Department of Parking Services (the “Director”). The message alleged that the gift was given “for voiding one or more parking tickets”, gave the approximate dates that the parking ticket was given to the Director and the gift was received, and identified the gift as a set of chairs. The message also attached images, which were apparently taken by the Department’s security cameras or by a departmental employee, of the RTM Member carrying an antique chair into the Director’s office and of what appeared to be a similar chair in the office.

Consideration of the message as a possible complaint was within the jurisdiction of the Board because it concerned actions of Town Officers and alleged

that a valuable gift (the chairs) had been received in exchange for a Town action (voiding of a parking ticket). Accordingly, the Board reviewed the message carefully and found that the facts alleged, taken at face value, contained all the elements of a violation of the Greenwich Code of Ethics (the "Code"). It was therefore determined to be a complaint as to the Director. Due to the nature of the alleged exchange, however, it was incumbent on the Board to consider whether the message also alleged facts that indicated a violation of the Code by the RTM Member.

REQUIREMENTS OF THE CODE

The Code contains two sections that might apply to the allegations made about the RTM Member in the complaint. The first is Section 3, which states:

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.

Since the voiding of a parking ticket would relieve the RTM Member of a financial obligation it can clearly be seen as a valuable favor. The complaint does not allege a specific action taken by the RTM Member in exchange for the favor. However, the Code only requires that what is received *might tend to influence* the performance or nonperformance of official duties. Since the Representative Town Meeting has broad legislative powers with respect to Town government, it is likely that a member of the Representative Town Meeting might be called upon to discuss and/or vote on budget or other matters pertinent to the Department of Parking Services and the receipt of a favor could influence the RTM Member in those discussions or votes.

Section 4 of the Code also prohibits Town Officers from exercising improper influence on Town actions:

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.

Because the complaint did not allege that the RTM Member had attempted to exert influence, but had rather exchanged a set of chairs for the voiding of the ticket, the Board had no occasion to view the complaint as alleging a violation of Section 4 of the Code. However, as discussed below, the information received by the Board in its preliminary investigation of the complaint raised a question as to whether there was such a violation.

While it must allege each of the elements of a violation of the Code, several additional criteria must be met in order for a submission to the Board to be considered a complaint under the Code of Ethics. In its Statement of Procedures and Rules of Conduct, the Board has articulated these criteria. A vague general accusation that a Town Officer has violated the Code is not sufficient. A complaint is required to contain enough detail to allow the Board to determine the specific Town actions or transactions involved and enough information about the circumstances for the Board to be able to conduct a productive inquiry into the matter. In the case of an anonymous submission, this requirement of specificity is particularly relevant since the Board has no ability to contact the complainant to supply additional information. In addition, the Board also considers the appropriateness of conducting an investigation into the matters alleged to ensure that the human and financial

costs of conducting the investigation do not significantly outweigh the benefits obtained by the Town.

After careful consideration of all these factors, the Board determined that the submission satisfied the requirements of the Code for a complaint against the RTM Member. Accordingly, the Board was required to commence a confidential preliminary investigation to determine if there was probable cause to believe that a full investigation of the matter would result in a finding that a violation of the Code had in fact occurred.⁸

Although the Board conducted its preliminary investigation and interviewed the respondents as a part of the same proceeding, the Board ultimately decided to consider the case of each respondent separately and to render separate decisions with respect to each.

STATEMENT OF FACTS

During its preliminary investigation, the Board was successful in establishing a number of pertinent facts relative to the allegations in the complaint. Because the complaint was anonymous, care was taken to protect the confidentiality of the respondents and to expand the scope of the investigation only by measured steps as justified by the production of credible and verifiable evidence.

⁸Subsequent to the Board's determination that the allegations in the email message should be considered a complaint, the Director engaged the law firm that employs the niece of Mr. Robert Sisca, who is a member of the Board. As a result, Mr. Sisca withdrew from participation in the preliminary investigation of the complaint did not participate in the drafting, discussion, consideration or approval of this decision.

Review of Parking System and Police Records. To begin the preliminary investigation, the Board first obtained reports from the Town's parking violations system database. These indicated that the RTM Member had in fact received a ticket on the evening of August 3rd, 2016. The ticket was manually issued by a police officer for parking in an illegal space at the Island Beach parking lot at 8:40 PM. System records further indicated that the fine was \$55, that penalties had accumulated in the amount of \$110, and that the entire \$165 had been "conditionally discharged" by the Director for "officer error" on September 14th.

A dispatch report for August 3rd indicated that the police received a call about a van that was being blocked from leaving the Island Beach parking lot and had dispatched a patrol car at about 8:30 P.M. The officer responding to the call issued six notices of violations to illegally parked cars, one of which was to the RTM Member. Later review showed that a fine had been paid in every instance except the violation issued to the RTM Member and also showed no record of any prior parking violations by the RTM Member in the database.

The parking violations database also recorded that a notice had been mailed to the RTM Member on September 14th. The notice was under the name of the Director's predecessor. Moreover, the copy that the Board received did not contain any indication of the disposition of the ticket or explanation of the reason for the notice to be sent. The RTM Member didn't recall receiving the notice.

Interview with RTM Member. During an interview with the Board, the RTM Member stated that the notice of violation had been brought to the attention of the Parking Director only to question whether it was consistent with Town policy,

because there were many other cars similarly parked that evening. If the ticket were appropriate, the RTM Member indicated that it would be paid, or, if inappropriate, submitted through the normal appeal process. Apparently, there was a further conversation about the matter sometime thereafter. But the RTM Member stated that by the time the chairs were delivered, slightly more than a month after the ticket was issued, the matter had been forgotten about and was not discussed. The notice from the Board of an ethics complaint was the first time the RTM Member became aware that the violation had been discharged.

Since the RTM Member was apparently comfortable using the normal appeal process, the Board inquired into the reason for going to the Director personally to ask that the ticket be looked into. The RTM Member indicated that it was simply a matter of convenience. Serving for many years on the RTM and various regular and special committees, the RTM Member had developed relationships with many of the Town's important appointed officials and key employees. When the Director first became involved in Town government, the RTM Member considered it important to be "welcoming" and to drop in from time to time to ask how things were going and if there was anything the RTM Member could do to be helpful.

The RTM Member indicated that the opportunity to be involved in numerous Town matters and to develop relationships with various Town decision makers was part of the RTM Member's activities as a member of the Representative Town Meeting. While not considering the relationship with Director particularly strong, the RTM Member had had several meetings during the early summer concerning parking at the Cos Cob Library and other issues of concern to the RTM Member's constituents. Aware of the Director's open door policy and apparently understanding the Town's accommodating stance toward parking violations at town events and tickets written by police officers, the RTM Member felt confident

that no special treatment had been sought or received in requesting the Director to look into the matter and having the ticket discharged.

As to the chairs, the RTM Member said that it was a hobby to fix up old furniture, and these had been found at the dump. They only required light restoration, involving a modest amount of gluing and refinishing and had been offered to several people, but they had all had turned them down. By the time they were delivered to the Director's office, the RTM Member was anxious to get rid of them and saw little value in them except for their functionality in providing additional seating options for the office.

The Board verified that the ticket given to the RTM Member appears to be the only parking ticket received in over twenty years. This shows that the RTM Member does not make a practice of parking illegally and asking the Department to void any tickets received. It places the allegations made in the complaint in a better context, but it does not make them irrelevant.

When questioned by the Board, the RTM Member showed a general appreciation of the provisions of the Code of Ethics and particularly mentioned the distinction between interests that an RTM Member would share with other Town residents and interests of a purely personal nature. The RTM Member indicated that there was no special training or information provided to members of the RTM about ethics compliance other than to receive the annual reminder letter from the Board regarding the filing of a disclosure form required by the Code.

Interview with Director. Although there were some differences in recollection, the Director later confirmed the essential elements of the RTM Member's account of

the matter, such as the fact that the ticket had been surrendered within 15 days and that there was at least one follow-up conversation about the matter. The Director recalled telling the RTM Member that if the ticket was inappropriate both the fines and any penalties would be voided even though processing the voiding of the ticket might occur after penalties had accumulated.

The Director indicated that the Town employees were trained to be “consumer friendly”. In the Department, this has led to a series of policies and “unwritten rules” that apply both to the enforcement of parking regulations and to the processing of contested tickets. As an example of a consumer-friendly policy, the Director maintains an “open-door” policy, where any member of the general public can drop in to complain about parking tickets or policy if the Director is not otherwise occupied. This open-door policy was cited by the Director as the reason that the RTM Member had first established a relationship with the Director (to discuss parking issues concerning the Cos Cob Library) and that the Director later considered it appropriate to deal with the issue of the RTM Member’s parking ticket directly.

The Director confirmed that one of the unwritten rules of the Department is to be more lenient in enforcing parking tickets when there is a surge in parking demand because of Town events. Therefore, the Director investigated the matter the RTM Member raised by calling the Parks and Recreation Department to confirm that there had been event an event in Roger Sherman Park that evening. The Director’s investigation did not include contacting the Police Department, however, even though the reason given for discharging the fine and penalties was “Officer Error”.

In the view of the Director, the RTM Member was treated no differently than any other member of the general public in being able to approach the Director directly and request that the matter be looked into. When the Director saw that the ticket was issued after the normal time for tickets to be issued by Departmental employees and was written by a police officer at a time when it was later confirmed that a Town event was taking place at a nearby park, the Director believed that there was ample justification for voiding the notice of violation. The fact that the reason given was “Officer Error” is apparently due to the limited number of codes available for entry and the lack of space allowed by the parking violations management system software for recording broader explanations.

The complaint alleges that the RTM Member delivered the chairs around the 6th of September, while the parking violations system records show that the fines and penalties were discharged on September 14th. The Director seemed genuinely uncertain, however, as to whether the chairs were received before or after the discharge occurred. At the same time, the Director was emphatic that the determination that the discharge was appropriate had been made quickly and prior to the time that the chairs were delivered, even if entered into the system afterwards.

When asked why the RTM Member shouldn't have been referred to the appeal process described on the Parking Services Department's website, the Director indicated that the practice of having all contests resolved by a formal hearing had been abandoned years ago, as the number of contests became too numerous to handle cost efficiently, even with the use of volunteer hearing officers.

FINDINGS

The Board has carefully reviewed and investigated the allegations in the complaint as they relate to the RTM Member and has appreciated the willingness of the RTM Member to cooperate in the Board's investigation. As a result of its investigation, the Board has developed the above statement of facts and a made determination of probable cause, which the RTM Member does not disagree with. Based on its factual determinations, the Board has made findings and recommendations. Since the RTM Member has agreed to the facts established during the preliminary investigation and consented to its recommendations as set forth below, the Board has determined that no further investigation of the complaint is necessary.

Because of the forthright manner in which the RTM Member and the Director cooperated in the Board's investigation of the complaint and in the absence of any evidence to the contrary, the Board accepts the Director's assertion that the RTM Member's fine and penalties were discharged in accordance with longstanding practices of the Department and for reasons that appeared to be unremarkable at the time, even though they do not appear to be particularly compelling to the Board in hindsight. We also accept that the RTM Member was familiar with these practices. Therefore, we do not find that the Director's decision to discharge the RTM Member's fine and penalties to have been a valuable favor to the RTM Member, which would be necessary in order for us to find a violation of Section 3 the Code.

At the same time, the concerted efforts of the RTM Member to use the position of being an RTM Member to gain an influential role in Town government cannot be overlooked. Indeed, in almost every other context they are laudable.

There is no doubt but that, by being active on RTM Committees and building relationships with other Town leaders, the RTM Member has become better informed about the matters that the Representative Town Meeting is responsible for, more effective at representing the needs of constituents and a more authoritative voice in Town government.

With authority, however, comes responsibility. Here, the relationship between the Director and the RTM Member was established on the basis of the RTM Member's special status to advocate on behalf of constituents and seek answers about how Town government operates. There is no question but that Section 4 of the Code prohibits Town Officers from using their office to influence actions in which they have a personal financial interest. With respect to a matter being dealt with by any Town department, in which a Town Officer has a direct financial interest, it should clearly be inappropriate for the Town Officer to approach any supervisory employee of the department.

The RTM Member has argued that, since the Representative Town Meeting has so many members, the influence of a single member is so negligible as to be non-existent. We appreciate that it must feel this way at times. But to accept this argument would be to do a disservice to the extensive and well-recognized efforts that the RTM Member has made to be involved in Town affairs at every level. The only good reason for this is to be a better member of the Representative Town Meeting.

The fact that the result of the Town action would have been the same had the RTM Member's ticket been handled by a non-supervisory employee is immaterial as it relates to Section 4. The prohibition applies to behavior before the action is taken

and is against the appearance of influence. Accordingly, the violation occurs regardless of the outcome. Here the impact of the RTM Member's position as a Town Officer may have been relatively small, but the infraction is real nonetheless.

In view of the foregoing, the Board determined that the RTM Member has violated Section 4 of the Code.

RECOMMENDATIONS

Because it appears that the parking ticket issued to the RTM Member would have been voided if a protest had been requested from a Hearing Officer, the Board recognizes that the RTM Member has gained very little of significant monetary value as a result of the action taken by the Director. The Board is also satisfied that this infraction may be attributable to a lapse of attentiveness to the application of the Code in this particular instance, rather than to a casual disregard for the requirements of the Code in general.

This apparently inadvertent infraction has clearly caused the RTM Member great distress. The Board notes that the RTM Member has written a letter disclosing this situation to the Moderator of the Representative Town Meeting and the Selectmen, which takes responsibility and makes constructive recommendations based on this personal experience. The Board is also pleased that the RTM Member has pledged to support amendments to the Municipal Code to clarify the procedures used by the Department in processing notices of violations and to support improvements in the internal controls of the Department in general.

Accordingly, the Board will forward a copy of this decision to the Moderator of the Representative Town Meeting and the Selectmen and recommends that the Moderator forward a copy to each member of the Representative Town Meeting and consider taking steps to improve the awareness of all members with regard to the standard of conduct required of them under the Code.