

Town of Greenwich

Board of Ethics



Official Reports

for

Fiscal Years 2015 -2019



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. 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

One Advisory Opinion was given and one complaint resulted in two decisions that were rendered in the 2016-2017 Fiscal Year as follows:

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 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,

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.

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

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.

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.

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

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).

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

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

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 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.

investigation of the complaint did not participate in the drafting, discussion, consideration or approval of this decision.

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.

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 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 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.

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).

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 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

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.

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.

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.

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.

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.

July 2017 – June 2018

One Advisory Opinion was given in the 2017-2018 Fiscal Year as follows:

Advisory Opinion No. 2018 – 01

Date: September 12, 2017

Topics: Town Officers; Advisory Boards and Committees

Code Sections: Sections 2 (a) (3), Section 5

Statement of Facts:

The Commission on Aging is participating in a program established by the American Association of Retired Persons (AARP) under the auspices of the World Health Organization. This program is identified as the Age Friendly Communities Program and its purpose is to serve as a catalyst to educate, encourage, promote, and recognize improvements that make cities, towns, and counties more supportive not only of their older residents but for residents of all ages. Under the program, the Commission has applied to have Greenwich designated as the first Connecticut community to join the Program's Network of Age-Friendly Communities.

As a part of the first phase of the program, the Commission is collecting data for a baseline assessment of age-friendliness of the Community. This will serve as a basis for a three-year action plan to be recommended to the Town for implementation. The program requirements stipulate that an advisory committee and possible subcommittees be established to assist the Commission in making the assessment and developing the action plan. The advisory panel is required to include representatives of Town Government as well as major non-profit and private

institutional service providers and constituent groups. It is the clear intention of the program that persons with personal interests, including economic interests, in the development plan be included in the advisory committee.

In order to properly advise members of the advisory committee and any subcommittees which may be established of their responsibilities under the program, the Commission has requested the Board to issue an advisory opinion with respect to the application of the Code of Ethics to the members of the advisory committee and any such subcommittees.

Questions Presented:

Will members of the advisory committee and any subcommittees be Town Officers for purposes of the Code of Ethics?

Discussion and Conclusions:

This request concerns the definition of Town Officer Section 2 (a) (3) of the Code of Ethics, which reads as follows:

“Town officer shall 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.”

It must be noted that the definition of Town Officer contained in Section 2 of the Code was intended to apply only for purposes of the Code and was not intended to apply for purposes of other Town classifications. This is made clear by the RTM’s specific inclusion of consultants and agents in addition to officials, employees and other elected and appointed officials. In this regard, the Board must consider whether the advisory committee is a committee or other agency “of the Town”.

What constitutes a committee or subcommittee or other agency of the Town has rarely been specifically addressed by the Board. Certainly, the fact that the members of the committee are to be selected by members of a commission that act as part of a Town department suggest that the committee will be a Town Committee. It is also clear that the Committee has been designed to speak for the Town, although not necessarily the Town government. However, most of the committees and agencies of the Town that the Board deals with appoint members under a process that is more formal, involving nominations by the Selectmen and approvals by the RTM. Other, less formal committees have established from time to time, but the application of the Code to such committees has never been the subject of a complaint or a request for an Advisory Opinion of the Board.

In this case, the Board believes that the advisory committee established by the Commission on Aging should be considered a committee of the Town because it is being created by a Town department as part of a formal effort to obtain consultative advice. The intention of the RTM to include consultants within the purview of the Code is clear. Whether they serve on a paid or unpaid basis seems immaterial.

Although the recommendations of the advisory committee and any subcommittees will not be directly translated into Town policies, the formal structure of the program ensures that the recommendations of the committee will have a formal role in the development of an action plan for the Town. The Board of Ethics has been consistent in considering formal advisory matters to be covered by the Code of Ethics.

In Advisory Opinion 98-02, a member of the Historic District Commission served as an architectural consultant for a real estate company and was asked to appear on a client's behalf before the Commission regarding an application for a designation as an Historic Overlay Zone in connection with the renovation of a building owned by

the client. The member did not appear before the commission as a registered agent for the company, but provided detail to the Commission as to architectural detail and historical background. The Commission didn't itself approve the designation, but served in an advisory capacity to the Planning and Zoning Commission.

While the Board encouraged the member in Advisory Opinion 98-02 to give the Commission the benefit of the member's professional expertise, it found it acceptable only to the extent that the member was "recused from participation in review of the application and all discussion and votes thereon by the Commission". Specifically, the Board found no reason to distinguish the situation from other Town actions simply because the Commission's recommendations were only made in an advisory capacity to the Planning and Zoning Commission:

"In this case, the action to be taken by the Town is the recommendation of the Historical Commission, not the designation by the Planning and Zoning Commission."

Similarly, in Statement 95-01, the Board considered whether a favor received by a Town Officer who was not "directly in the decision-making chain with regard to the duties to be performed" could result in a violation of the Code and commented that it could be considered a gift or favor for purposes of the Code. It is also noted that the Connecticut Freedom of Information Commission recently confirmed its 1988 decision that Greenwich Emergency Medical Services was covered by the State Freedom of Information Act because it had been created by Town action and was supported by Town funds. This is consistent with the Board's decision in Advisory Opinion 96-01.

Accordingly, the Board finds that members of the advisory committee being established by the Commission on Aging as part of its Age-Friendly Communities initiative will be subject to the Code of Ethics. The Commission should inform the

members of the committee and any subcommittee that they are subject to provisions of the Code with regard to gifts, favors and financial interests, including the reporting requirements of Section 5 of the Code.

The Board recognizes that the nature of the committee is such that members will in many cases be selected because of their interest in the matters being dealt with by the Committee. This is not entirely unusual for Town committees and is a reason for persons to serve, not to avoid service, as the Board has stressed on many occasions. The Board has addressed issues related to this on previous occasions and expects to address these issues further when it responds to other questions raised in the Commission's request, which are currently under advisement.

See Related: A98-02, S95-01, A96-01

July 2018 – January 2019

Through January, 2019, two Advisory Opinions were given and one complaint resulted in a Decision that was rendered in the 2018-2019 Fiscal Year as follows:

Advisory Opinion No. 19-01

Date: 9/11/2018

Topics: Favor, Financial Interest, Gifts, Vendors

Code Section: Section 3

Statement of Facts:

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

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

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

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

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

Part of the director's oversight role will be to approve payments to the vendor aggregating approximately \$20,000 per year. In addition, the vendor provides

additional services that may be contracted for by other Town Departments. Some of these services may be directly related to the existing contract (such as training in the use of the product under contract). Others may not be directly related to the contract, but may still relate to services that the director would be expected to assist the Town in evaluating and/or implementing. Therefore, the director sees participation in the vendor's advisory board as useful in making better use of the services the Town has already contracted for and also in developing an understanding of services that may be useful to other Town departments, whether those services are provided by the vendor or not.

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

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

process, improving the chances that product upgrades would be beneficial rather than problematical to the Town.

The director is aware that participation in the client advisory board may affect the director's perception of the vendor's products and services: "The content of the meetings might indeed influence my opinion about whether the [*vendor's service*] remains a viable solution for the Town..." However, the director does not believe that this influence will be the result of a valuable gift or favor: "...that influence would be based solely on the merits [*of the product*], rather than for personal gain."

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

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

attending, such as gift cards, expensive theatre tickets, golf outings or other such entertainment.”

Relevant Code Provision:

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

Question Presented:

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

Discussion and Conclusion:

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

“Particularly in the case of travel to remote resort locations, there is a possibility that the vendor is covering the cost with the expectation that the Town Officer will consider the

opportunity to attend the event as a favor that might influence the performance of his or her official duties.”

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

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

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

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

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

expense of participation a program or event is approved by a supervisor and paid for by the Town, the Board may presume that the Town Officer's participation is a normal and beneficial part of the Town Officer's job.

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

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

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

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

If the director accepts a position on the vendor's client advisory board, the Board of Ethics would expect the director to follow appropriate procedures in documenting the benefits of the position to the Town, consistent with the good practice of seeking this

advisory opinion. The director could submit a written memo to the Town Administrator prior to attending any out of town meetings, describing the purpose of the travel and including relevant agenda materials, and/or could include a summary of the benefits of attending the meetings in connection with travel reimbursement requests.

The Board would also expect the director to provide written communications to relevant parties describing ways in which the director's telephonic and in person meetings as a member of the advisory board provided insights into how the Town's operations might be improved. These insights might also be summarized in any self-assessment or notes prepared in connection with performance reviews. Sensitivity in reporting back to staff, other directors, the Town Administrator and the 1st Selectman about the insights gathered through participation in the advisory board will be important, not only in avoiding the appearance of impropriety, but also in making judgements as to whether continued participation in the advisory board's activities is worth the cost to the Town in time and expense.

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

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

Decision No. 19-1

Date: 10/31/18

Topics: Thing of Value; Failure to Perform Duties; Influence by Supervisors; Applications vs. Transactions; Direct and Indirect Interests

Code Sections: Sections 3, 4 & 5

The Board of Ethics received a submission concerning the activities of the Vice-Chair of the Conservation Commission. The submission concerned the activities of the respondent in connection with a subdivision application before the Planning and Zoning Commission. Under its Statement of Procedures, the Board proceeded with a confidential investigation to determine if there was probable cause that a violation of the Code had occurred.

The first step in any such investigation is for the Board to evaluate whether the submission alleges a violation of the Code by a Town Officer and whether the Board has jurisdiction over the subject matter and the person alleged to have violated the Code. In performing this review, the Board considers only the allegations contained in the submission and assumes the truth and completeness of these allegations without further investigation. After this evaluation, the Board makes a finding as to whether the submission makes a complaint that should be further investigated or whether the submission should be dismissed because it fails

to state a specific violation of the Code over which the Board has appropriate jurisdiction.

The submission was received in three stages: The first was submitted on the Board's official complaint form and dated June 15th, 2018. The second and third were addressed to the Board as supplemental to the original submission and were submitted under the dates of August 29th and October 5th, 2018.

The Board determined that the respondent was a Town Officer within the meaning of the Code. It also determined that the allegations involve possible violations of Sections 3, 4 and 5 of the Code of Ethics. As to each of these, however, it determined that the submission did not allege facts supporting the conclusion that a violation of the Code existed. The board made this determination for the following reasons:

Section 3 - Gifts and Favors. The submission indicates that the respondent represented an applicant before the Planning and Zoning Commission. Taken at face value, the Board believed this alleges the acceptance of a "valuable thing", within the meaning of Section 3, which prohibits the acceptance of a valuable thing that might tend to influence the performance or non-performance of official duties.

The submission further indicated that the respondent's client did not submit a Coastal Site Plan in connection with a proposed subdivision approval as required by the Town's application form for review of Coastal Site Plans⁹. Complainant suggested that the respondent, as Vice-Chair of the Conservation Commission, should have informed the Planning and Zoning Commission of the requirement to

⁹ Section 6-111 (c) (A) of the Greenwich Municipal Code provides in pertinent part that:

"Coastal Site Plan review and approval by the Planning and Zoning Commission...shall be required for all projects and activities...fully or partially within the Coastal Overlay Zone. These activities shall include...all applications for building permits, subdivisions, rezoning, special permits, special exceptions, variances, and Municipal improvements."

It is noted that the submission also indicates that the Coastal Site Plan *was* submitted in connection with separate site plan approvals and that counsel advised that the Planning and Zoning Commission could defer the Coastal Site Plan review until that review was undertaken. This advice may have been erroneous, but there are many exceptions to the requirement. Therefore, it did not seem obvious that the respondent could not rely on the opinion of counsel.

submit a Coastal Site Plan because the Planning and Zoning Commission would “typically” rely on Conservation Commission advice in connection with reviewing such a plan. In effect, this suggests that volunteer service on a Town Commission creates an obligation on the part of an individual serving on that Commission to suggest to other Commissions when they might wish to call upon the advice of that Commission.

The Board indicated that, if and when the planning and Zoning Commission were to request a determination from the Conservation Commission with respect to the matter, it would expect the respondent to be recused from any involvement with the matter as a member of the Conservation Commission. However, while it might have been admirable to have done so, the Board did not conclude that the respondent had an *obligation* to give unsolicited advice about conservation matters to the Planning and Zoning Commission in order to be in compliance with the Code of Ethics. Accordingly, the submission was found not to allege a violation of Section 3 of the Code.

Section 4 - Improper Influence. The submission further alleged that the respondent exercised influence over the approval of the subdivision. Complainant suggested that the respondent was in violation of Section 4 of the Code of Ethics, which prohibits Town Officers from exercising influence over a Town action in which they have a financial interest. It was alleged that this influence might have been exercised because a staff member of the Land Use Department (who provided memoranda concerning the project to the Planning and Zoning Commission using Conservation Commission stationary) would be reluctant to advise against the proposed project by virtue of the respondent’s position as her superior. During the Board’s hearing on the matter, however, Complainant indicated that the staff member had “courageously” provided a detailed list of concerns to the Planning and Zoning Commission, although it was speculated that her reports might have been “muted” as a result of the respondent’s position on the Conservation Commission. Complainant indicated that the concern was not with the substance of the reports, but with the appearance of a conflict.

The Board applauds the extensive efforts made by many Town Officers to avoid “appearances” of conflicting interests. However, it noted that appearances are

subjective matters and that a violation of the Code requires actual influence to be exercised. There was no indication that the staff member had any contact with the respondent concerning the matter (and respondent confirmed that there was no such contact) or that her report on the matter indicates any such influence. Accordingly, the submission was found not to allege a violation of Section 4 of the Code.

Section 5 - Failure to File. The submission further alleges that the respondent did not file a disclosure statement with regard to the project in accordance with Section 5 of the Code. It is noted that Section 5 requires disclosure statements to be filed with respect to Town “Transactions”, as defined in the Code and that, while an application may ultimately involve a transaction with the Town, an application to the Town does not in-and-of itself normally create a Town Transaction. Moreover, no direct financial interest in the project by the respondent had been alleged (and the respondent had confirmed the absence of any direct financial interest in the project or any transaction related to it). Accordingly, the submission was found not to allege a violation of Section 5 of the Code.

Accordingly, while the Board commend the high standard that the Complainant and many other Town Officers seek to achieve in order to avoid any appearance of conflicting interests in connection with their service to the Town, the Board determined that the submission did not allege facts sufficient to qualify as a complaint that should be investigated under the Code.

Advisory Opinion No. 19-02

Date: 9/11/2018

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

Code Sections: Definitions, Sections 4 and 5

Statement of Facts:

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

The Director of the Department is a Town employee, appointed by the Commission, who reports directly to the Commission and the First Selectman. The Commissioners provide direction for the Department, review its activities and its budget and approve various matters related to Department operations. As such,

Commission members may be asked to vote on Town actions and transactions or may be in a position to influence such actions or transactions.

In its Mission Statement, the Commission identifies “facilitating education, *information on and referrals about*¹⁰ programs, services and benefits” affecting older Town residents as one of its primary activities. Although the Department engages in a wide range of activities related to the Town’s older residents, its principal activities may be described as follows:

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

The Resource Guide is prepared under the supervision of the Director. It is the policy of the Department to be inclusive, but occasionally service providers are removed from the Guide in situations where the provider has lost accreditation or similar circumstances. Listings in the Resource Guide are done in alphabetical order and contain only non-proprietary contact information for the organizations listed, such as addresses, phone numbers and website addresses (the online version of the Resource Guide provides hyperlinks to the websites). The Resource Guide provides no ratings or other qualitative information about the organizations listed and its introduction contains the following disclaimer:

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

¹⁰ Italics added.

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

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

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

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

Senior Center and Related Activities. The Department operates a Senior Center in facilities owned by the Town. Activities at the Senior Center are varied and include health, transportation, food and employment services, art and fitness classes and various programs and training sessions related to senior health and wellness. At the Senior Center, the Department provides free individual counseling on

Medicare, Medigap and Medicare D insurance options through a partnership with Family Centers, Inc. It also sponsors and provides space for discussions on innovations in elder care through a partnership with Aging 2.0 and provides space for meetings and activities of the Alzheimer's Association and Utilize Senior Energy, Inc. (a non-profit providing employment services for seniors). The Department also provides office and meeting space for Liberation Programs, a non-profit alcohol and substance abuse program.

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

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

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

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

Sponsors of the Department's general activities are given recognition in the Department's publications. On the covers of the Resource Guide and in a section of the Department's monthly newsletters, there is space provided to acknowledge sponsors, most of whom are also listed in the guide. The acknowledgements are given space according to the level of sponsorship, which for smaller sponsors may contain only the name of the sponsor or its logo. The space for larger sponsors may also include artwork, brief descriptions of the services the sponsor provides and feature favorable characterizations of the sponsors services and information about awards and recognitions that the sponsor has received.

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

Questions Presented:

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

Discussion and Conclusion:

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

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

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

"No town officer having a substantial financial interest in any transaction with the town or in

any action to be taken by the town shall use his office to exert his influence or to vote on such transaction or action.”

while Section 5 provides that:

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

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

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

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

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

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

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

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

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

Since the process of collecting information for inclusion in the Resource Guide involves the furnishing of information (which may be considered *personal property* or *material*) for the *use* of the Department, there are some transactional elements to the exchange. However, the request for information from the Department creates no obligation on the provider to respond. Moreover, by the terms of the request¹¹, the furnishing of information by the responder creates no obligation on the part of the Department to include the provider in the Resource Guide. The process is simply a Town action and a response (or non-response) to it.

It can easily be seen that the process of providing information for the Guide is not unlike the process that many Town residents routinely go through in providing reports to the Town from which it collects information. If the information provided to the Town is simply collected for reporting purposes or to measure compliance with tax or regulatory requirements, it does not involve the reciprocity of interest that the Code contemplates in connection with a Town transaction.

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

¹¹ There may be reasons why the Department would feel obliged to include a provider's listing in the Resource Guide, but they do not derive from the process of making the request or receiving the information. Rather, they are a result of a decision to compile the guide made without regard to any transaction between the Department and those listed in the guides.

Since the exchange of information involved in compiling the Guide does not involve the reciprocity necessary to be considered a transaction for purposes of the Code, the individuals and entities listed in the Code are not required to file a disclosure statement under Section 5 of the Code disclosing their interest in the listing¹².

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

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

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

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

¹² Of course this relates solely to the interest in the listing itself and does not excuse them from filing a disclosure statement to disclose other interests, such as an interest in advertising space provided to sponsors in the guide as discussed in item 3 below.

As a comprehensive, non-evaluative listing of providers, the Resource Guide is carefully designed to benefit the whole community without providing any particular advantage to a specific provider or group of providers. Therefore, matters relating to the publication of the Guide as a whole, such as approving the overall budget for its publication and distribution or discussing the general format, layout and design of the Guide, are matters that a member of the Commission may discuss and vote on as matters in which other citizens of the Town have an interest.

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

In Advisory Opinion 09-03, the Board suggested safe harbor procedures for RTM Members dealing with committee matters in which they had a non-community interest that was more than nominal. The Board has also provided general guidance as to the handling of by members of boards and commissions in Advisory Opinion 16-01. Similar considerations would apply to members of the Commission. Best practices would suggest that a member who has such an interest immediately notify the Chair of the Commission about the interest as soon as he or she becomes aware of it. The Chair should then ensure that all other members of the Commission and staff of the Department are made aware of the conflict and advised not to discuss the matter with the affected member¹³. In addition, the minutes of any meeting

¹³ It goes without saying that after disclosing the interest to the Chair, the member should not have further discussions of the matter with other members of the Commission or the staff of the

dealing with the matter should indicate that the affected member had the conflict and left the room during discussion and vote.

In summary then, the Board recognizes that individuals and entities listed in the Resource

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

3. Sponsorship Contributions.

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

Department. In Advisory Opinion 09-03, however, the Board did contemplate that members of the RTM could be permitted to address the RTM or a Committee with respect to a matter in which they have an interest, so long as the interest is publicly acknowledged and the information given is in the form of testimony rather than discussion. Obviously, the representative role of RTM members was paramount in the Board's consideration in that instance. But the Board does believe that, in rare instances, a similar exception might be made in a Commission meeting. In that case, the Commission would have to determine that the member had unique knowledge that would be useful in making the decision, that the appearance would be limited to testimony and that the testimony would have to clearly be limited to informing the Commission, rather than influencing it.

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

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

4. Interests in referrals and promotional materials.

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

A formal contract is not required to create a transaction for purposes of the Code. In Advisory Opinion 09-02, an established course of conduct was found to result in a Town transaction despite the absence of any formal arrangement.¹⁴ However, the Department's neutral policies with respect to referrals and the distribution of promotional materials prevent the creation of the reciprocal kind of relationship contemplated by the Code in its definition of "transaction".

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

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

¹⁴ A regular pattern of the Town paying for instruction provided at sports clinics was found to result in a Town transaction despite the absence of any formal arrangement.

distributed by, the Department under its current policies are required by Section 5 of the Code to file a disclosure statement as to such interest.

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

5. Arrangements and Partnerships.

Many of the services provided by the Department are conducted jointly or through arrangements with other agencies and organizations, including for-profit and non-profit entities. Typical of these relationships is a spirit of cooperation and mutual trust in achieving a worthwhile goal. Often the services are provided through

mutual accommodations and undertakings that have evolved over time and are not the result of formal negotiations or written agreements.

As discussed with respect to referrals and promotional materials, the Board has found that a transaction can be created through an established course of conduct that involves reciprocity. Although the circumstances in Advisory Opinion 09-02 provided for a cash payment by the Town, the Code clearly contemplates an exchange of “valuable consideration” other than cash¹⁵. The provision of office, meeting or event space, or supplies, personnel, technical assistance, information or other resources by the Town to a third party could therefore be seen as valuable consideration in the context of a reciprocal relationship.

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

Members of the Commission who are involved with an entity participating in such an arrangement should consider carefully whether the arrangement could be viewed as a transaction for purposes of the Code of Ethics and whether they may have a personal financial interest in the entity. In this regard, it is important to bear

¹⁵ It is obvious that joint endeavors and arrangements with other Town entities, such as the Department of Health, Nathaniel Witherell or the Library, do not involve a Town transaction, within the meaning of the Code. While one department or agency of the Town may provide valuable assistance to another, the Town as an overall entity cannot *receive* value that it has *created* itself.

in mind that one's financial interest as an employee, board member, manager or major donor to a non-profit organization is not the same as the organization's interest itself. With a for-profit entity, the principal objective of turning a profit is obvious, as is the financial interest in that entity held by an owner, partner, contractor or employee. With a not-for-profit entity, however, the financial interest of a major donor, board member, volunteer manager or employee is not aligned with the principal objective of the entity in the same way.

In Advisory Opinions 95-01, 00-02 and 04-4, the Board dealt with the financial interest of board members, managers, donors and volunteers of non-profit organizations engaged in transactions with the Town. The separate financial interest of an employee is apparent, since they derive monetary compensation from the organization. But the Board has indicated that others can also have a financial interest in the strength and management of a non-profit organization that is separate from its own interest in achieving its non-profit objectives. Thus a major donor has a financial interest in the donation being well spent. A board member or volunteer manager has an interest in the organization's sound financial management. These financial interests are personal to them even if they are related to their interest in the objectives of the organization.

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

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

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

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

Decision No. 19-01

Date: 11/1/2018

Topics: Conservation Commission, Failure to File, Gifts and Favors, Improper Influence, Planning and Zoning Commission

Code Sections: Definitions, Sections 3, 4 and 5

Statement of Facts:

A Complaint was filed indicating that a member of the Conservation Commission violated the Code of Ethics by failing to advise the Planning and Zoning Commission of the client's failure to file a required Coastal Site Plan and by influencing the report of a staff member who worked for both the Planning and Zoning Commission and the Conservation Commission.

Discussion and Conclusion

A submission was made to the Board relating to the activities of the a member of the Conservation Commission in connection with a subdivision application before the Planning and Zoning Commission. Under the Board's Statement of Procedures, the Board proceeded with a confidential investigation to determine if there was probable cause that a violation of the Code has occurred.

The first step in any such investigation is for the Board to evaluate whether the submission alleges a violation of the Code by a Town Officer and whether the Board has jurisdiction over the subject matter and the person alleged to have violated the Code. In performing this review, we consider only the allegations contained in the submission and assume the truth and completeness of these

allegations without further investigation. After this evaluation, the Board makes a finding as to whether the submission makes a complaint that should be further investigated or whether the submission should be dismissed because it fails to state a specific violation of the Code over which the Board has appropriate jurisdiction.

The submission was received in three stages: The first was submitted on the Board's official complaint form and dated June 15th, 2018. The second and third were addressed to the Board as supplemental to the original submission and were submitted under the dates of August 29th and October 5th, 2018.

The Board determined that the respondent was a Town Officer within the meaning of the Code. It also determined that the allegations involve possible violations of Sections 3, 4 and 5 of the Code of Ethics. As to each of these, however, the Board determined that the submission does not allege facts supporting the conclusion that a violation of the Code exists. The Board made this determination for the following reasons:

Section 3 - Gifts and Favors. The submission indicates that the respondent represented an applicant before the Planning and Zoning Commission. Taken at face value, the Board believed that this alleged the acceptance of a "valuable thing", within the meaning of Section 3, which prohibits the acceptance of a valuable thing that might tend to influence the performance or non-performance of official duties.

The submission further indicated that the respondent's client did not submit a Coastal Site Plan in connection with a proposed subdivision approval as required by the Town's application form for review of Coastal Site Plans⁶. Complainant

⁶ Section 6-111 (c) (A) of the Greenwich Municipal Code provides in pertinent part that:

"Coastal Site Plan review and approval by the Planning and Zoning Commission...shall be required for all projects and activities...fully or partially within the Coastal Overlay Zone. These activities shall include...all applications for building permits, subdivisions, rezoning, special permits, special exceptions, variances, and Municipal improvements."

It is noted that the submission also indicates that the Coastal Site Plan *was* submitted in connection with separate site plan approvals and that counsel advised that the Planning and Zoning Commission could defer the Coastal Site Plan review until that review was undertaken. This advice may have been erroneous, but there are many exceptions to the requirement. Therefore, it does not seem obvious that the respondent could not rely on the opinion of counsel.

suggested that the respondent, as Vice-Chair of the Conservation Commission, failed in his duty to inform the Planning and Zoning Commission of the requirement to submit a Coastal Site Plan because the Planning and Zoning Commission would “typically” rely on Conservation Commission advice in connection with reviewing such a plan. In effect, this suggests that volunteer service on a Town Commission creates an obligation on the part of an individual serving on that Commission to suggest to other Commissions when they might wish to call upon the advice of that Commission.

If and when the planning and Zoning Commission requests a determination from the Conservation Commission with respect to this matter, we would expect the respondent to be recused from any involvement with the matter as a member of the Conservation Commission. However, while it might have been admirable to have done so, we cannot conclude that the respondent had an *obligation* to give unsolicited advice about conservation matters to the Planning and Zoning Commission in order to be in compliance with the Code of Ethics. It may be an official duty of the Conservation Commission to advise the Planning and Zoning Commission with respect to the filing of the site plan, as complainant noted. This is not the same as saying that members of the Conservation Commission have an official duty to advise the Planning and Zoning Commission that a site plan is required to be filed, especially when the respondent appeared to rely on the advice of counsel in this regard. Accordingly, the Board found that the submission did not allege a violation of Section 3 of the Code.

Section 4 - Improper Influence. The submission further alleged that the respondent exercised influence over the approval of the subdivision. It suggested that the respondent is in violation of Section 4 of the Code of Ethics, which prohibits Town Officers from exercising influence over a Town action in which they have a financial interest. Complainant believed that this influence might have been exercised because a staff member of the Land Use Department (who provided memoranda concerning the project to the Planning and Zoning Commission using Conservation Commission stationary) would be reluctant to advise against the proposed project by virtue of the respondent’s position as her superior. During the Board’s hearing on the matter, however, Complainant indicated that the staff

member had “courageously” provided a detailed list of concerns to the Planning and Zoning Commission, although it was speculated that the reports might have been “muted” as a result of the respondent’s position on the Conservation Commission. Complaint indicated that the concern was not with the substance of the reports, but with the appearance of a conflict. The Board applauds the extensive efforts made by many Town Officers to avoid “appearances” of conflicting interests and commended the Complaint for expressing concerns in this regard. However, it noted that appearances are subjective matters and that a violation of the Code requires actual influence to be exercised. There is no indication that the staff member had any contact with the respondent concerning the matter (and the respondent has confirmed that there was no such contact) or that her report on the matter indicates any such influence. Accordingly, the Board found that the submission does not allege a violation of Section 4 of the Code.

Section 5 - Failure to File. The submission further alleged that the respondent did not file a disclosure statement with regard to the project in accordance with Section 5 of the Code. It is noted that Section 5 requires disclosure statements to be filed with respect to Town “Transactions”, as defined in the Code and that, while an application may ultimately involve a transaction with the Town, an application to the Town does not in-and-of itself normally create a Town Transaction. Moreover, no direct financial interest in the project by the respondent has been alleged (and the respondent has confirmed the absence of any direct financial interest in the project or any transaction related to it). Accordingly, we find that the submission does not allege a violation of Section 5 of the Code.

Accordingly, while the Board commends the high standard that Complainant and many other Town Officers seek to achieve in order to avoid any appearance of conflicting interests in connection with their service to the Town, the Board determined that the submission does not allege facts sufficient to qualify as a complaint that should be investigated under the Code.

See related: A-89-02, S-00-01, A-97-01, A-04-02, A-04-03, S-95-01