

Mayor  
DAVID R. MARTIN



**BOARD OF ETHICS  
CITY OF STAMFORD**

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October 5, 2014

Mr. Richard Lyons II  
Board of Education  
Stamford Government Center  
888 Washington Boulevard  
Stamford, CT 06901

Dear Mr. Lyons,

Thank you for your appearances before the Board of Ethics to address your request for an Advisory Opinion regarding a desire to seek employment as a district-wide project coordinator with AFB Construction, a private company currently under a contract with the city granted by the Board of Education ("BOEd"), of which you were a board member.

As you are aware, § 19-13 of the city's Code of Ethics places limits on the "Subsequent employment" of officers and employees of the city, including elected members of the BOEd, in an effort to prevent either the appearance or actual use of one's position of public trust for personal enrichment, especially at the expense of city tax payers. Section 19-13 states that an individual who has served as an officer or employee [of the City of Stamford] shall not:

- A) Assist any person, other than the city, in any matter in which said individual participated personally and substantially during his or her service with the city.
- B) Within one (1) year after termination of his or her service, assist any person, other than the city, in any matter that was pending before the agency in which he or she was employed; or appear before the agency in which he or she was a member or employed, or assist any other person to make such an appearance.

Your potential employment as a District-Wide Project Coordinator by AFB Construction under a contract approved and overseen by the BOEd would pose no violation of paragraph A of this section. Paragraph A would preclude you from assisting in matters that you "personally and substantially" participated in while a member of the

BOEd. Your recusal from deliberations over, and vote to approve, the BOEd's contract with AFB Construction excluded you from personal or substantial participation in the matter. Therefore, under the circumstances presented, your employment would likely not violate § 19-13(A) of the city's Code of Ethics.

Your potential employment by AFB Construction under § 19-13(B) is a more difficult question for this Board. Under the first clause of this section, former members of the BOEd, like other city officers and employees, are precluded from assisting anyone, other than the city, in a matter that was pending before the BOEd during his or her tenure, for a period of one year after leaving city service.

You are potentially seeking employment with AFB Construction within a year of your leaving city service. To assess whether you would be in violation of the first clause of § 19-13(B) by taking the position, this Board must determine whether your taking a position with a city contractor in a supervisory role over the execution of a contract negotiated and approved by the BOEd during your tenure there (that happened to have been created by the same contract) assists someone other than the city in a matter that was before the BOEd during your tenure. The Board, with some hesitation by some of the members, believes that it does not.

After seeking advice from the City Corporation Counsel and finding no prior Advisory Opinions or complaint adjudications interpreting the language at issue, the Board finds it must interpret the meaning of the provision at issue in light of the dual goals of the Code, expressed in § 19-2: the prevention of the use of public office by individuals for personal, business, or financial gain; and the preservation of the public's confidence in the integrity of our municipal government. The Board also construes this language in light of the city's interest in encouraging volunteerism in public service. The Code of Ethics should prohibit actual conflicts of interest and guard against the appearance of conflicts of public interest without discouraging individuals from volunteering to serve in unpaid board positions by imposing overly burdensome limitations on future employment.

The Board first looked to whether employment by a private company in a supervisory role on a city contract constitutes rendering assistance to someone "other than the city." The Board considered a potential interpretation of "assist any person, other than the city" to exclude job roles deemed necessary by the city agency at issue, and that could be completed by city employees, under the rationale that the overarching policy goal of the Code of Ethics is to protect the city from unscrupulous employers and former city officials. In theory, in taking such a position, an individual would be acting in service of the city and therefore would not be in a position to injure the city. Under such an interpretation, you would not be in violation of § 19-13 by taking a supervisory role over trades workers on construction contracts because your interest, your employer's interest, and the city's interest in fulfilling this task, the efficient and on-budget completion of construction projects, would align. You would be serving the city's interests as well as your prospective employer's. However, the Board rejected that interpretation of the Code.

A more literal understanding of "assisting persons other than the city" would better serve the efficacy of the prohibition under the Code. The Board is hard pressed to think of an example of any role that a city agency could contract with a private company to fulfill that it could not, in theory, fill through internal hiring. By interpreting "other than the city"

as permissively as suggested above could make § 19-13 meaningless because subsequent employment under government contracts, an archetypical vehicle for both the actual or appearance of abuse of the public trust, would be immune from regulation under either paragraph of §19-13. Consequently, your potential employment with AFB Construction within one year of your service on the BOEd is assistance of AFB Construction, a person, other the city, that would be prohibited by § 19-13 if it was assistance with a matter pending before the BOEd before your departure.

Accordingly, the Board must then determine if an individual who takes a position with a private company, created by a contract approved by a city agency during that individual's tenure with the same city agency—to oversee maintenance for city schools—constitutes assistance in a matter that was pending before the city agency for which he or she was a member. The answer to this question, and ultimately whether your potential employment with AFB construction violates §19-13, requires the Board to determine the meaning of "matter pending before the agency." It is the opinion of the Board, with some reservation, that mere employment under an existing contract with a city agency, no longer under consideration by the agency for any agency action at the time of one's hiring, does not constitute assistance with a matter that was pending before the agency. Consequently, it is the opinion of the Board that your potential employment as described to the Board would not violate the first clause of § 19-13(B) of the Code of Ethics.

With respect to city contracts, "matter" may be defined in one of two ways: it may be defined broadly to encompass the deliberation and approval of the contract as well as the operation of the contract through the contract's expiration; or it may be narrowly construed to include only the negotiation, deliberation, and final agency action on the contract. For the following reasons, and after much considered debate over the intersection of competing policy considerations, the Board concludes that "matter" should be construed narrowly.

With the stated policy purpose of the Code of Ethics in mind—the prevention of both actual and the appearance of conflicts of interests—it is not unreasonable to find the entire operation of a contract approved and overseen by a city agency to be a matter before the city agency. The presence of a requisite level of involvement for a lifetime ban on assistance on a matter before a city agency in paragraph A juxtaposed against the one year ban on assistance on a matter grounded in mere affiliation with a city agency may indicate that the drafters wanted to create a period of breathing room between a person's leaving an agency and their employment on an agency contract position to avoid not only the clear use of one's city position to obtain subsequent employment but the appearance of impropriety. Recent press coverage shows that even in a matter such as this, where the Board is aware of no evidence of self-dealing or improper influence over the AFB Construction contract deliberations, the one-year limitation in paragraph B can be useful in avoiding the appearance of a revolving door between city agencies and companies that profit off of contracts with those agencies. It would also be easy for enforcement to draw a bright line prohibiting an employee or officer of a city agency from taking employment with a city contractor related to a city contract within one year of their leaving city service.

However, a year-long restriction on the employment opportunities of those who volunteer their time in public service to the city would discourage the most talented members of our community from public service, those whom it is most important to

encourage to serve. Therefore, such a strict interpretation of “matter” under the code cannot serve both the stated policy purposes of the code *and* a more overarching policy concern of encouraging public service.

A more narrow interpretation of “matter pending before a city agency” best serves the dual—potentially competing—policy concerns of avoiding conflicts of interests and promoting volunteerism in public service. Such an interpretation avoids penalizing individuals who do chose to volunteer their time for a city agency, by prohibiting them from innocently taking positions with companies that happen to have a contract with a city agency subsequent to their service with that agency. Positions that open up within the one year period after an individual’s volunteer service are unlikely to remain open for the full year; it also cannot be assumed that another comparable position will become available after the year is up. Under this construction, the first clause of paragraph B still protects a city agency from actual conflicts and the appearance of conflicts of interest. A city employee or officer may not leave their agency while a matter is under deliberation or pending a vote and take a position within a year that assists their new employer to influence those agency deliberations or other actions on the matter, or use information gained by virtue of their position with the city, even if they recused themselves or made other attempts to avoid personal and substantial participation in the matter.

Other restrictions on city employees and officers address the policy concerns that may be left unanswered by a narrow interpretation of “matter” in §19-13(B). Sections 19-13(A) and 19-8 (prohibits use of influence and information gained by virtue of city service for personal gain) still protect against the use of one’s public office through direct involvement or indirect influence of others in the same agency to obtain employment during or after their city service. Section 19-12’s prohibition of city employees or officers soliciting future employment from anyone with a substantial matter before their agency also serves to preclude both actual instances where a city employee may gain future employment because of their position with the city, or any appearance of that being the case. Section 19-12’s prohibition on “soliciting future employment with any person who has a substantial matter pending before the agency in which the officer or employee is employed during said period of employment or during the period of time said officer holds office” more directly addresses the concern of an actual conflict of interest by an officer or employee and therefore arguably allows for the more narrow interpretation of §19-13(B).

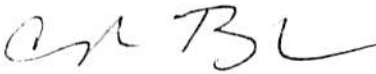
The second clause of § 19-13(B) goes further by prohibiting former city employees and officers from appearing before the agency for which they were employed for one year after the end of their service. Though the job description provided to the Board does not appear to contemplate your appearing before the BOEd, or advising anyone regarding any appearances they may make, the Board would like to remind you that, to remain in compliance with the second clause of §19-13(B), you may neither personally appear before the BOEd representing anyone other than the city, nor assist anyone appearing on your employer’s behalf before the BOEd for a period of one year from the termination of your membership on the BOEd.

The Board also believes that you and your employer should conservatively interpret the appearance clause of §19-13(B) to avoid any potential that non-verbal interactions with the BOEd or routine reporting on the progress of capital projects and operations could be interpreted as an appearance by you or assistance in another’s appearance before the Board of Education within the one year statutory period.

This opinion is based on your original request for an Advisory Opinion, subsequent written materials and testimony you provided, as well as comments provided by Mr. Al Barbarotta, CEO of AFB Construction and Mr. Steve Falcone, the Human Resources Director for the BOEd. The Board wishes to emphasize that its findings pertain only to these specific circumstances, and should not be construed as precedent for any future requests for an advisory opinion or complaint filed with the Board.

The Board of Ethics thanks you for your long record of service to our City and appreciates the thought and time you have devoted to this matter.

Sincerely,



Cheryl G. Bader, Chair  
Clarence R. Grebey III, Secretary  
John Martelli, Member

Daniel E. Sanchez, Member  
Michael Thomas, Alternate Member  
Adam Vandervoort, Member

Copy: Donna M. Loglisci, Town & City Clerk