

BOARD OF ETHICS OF THE CITY OF STAMFORD

AN ADVISORY OPINION

RE: ANTHONY TRUGLIA, ET AL

On May 10, 1974, the Board of Representatives acted on the budget of the city of Stamford. One of these actions included the operating budget of the Board of Education. Four members of the Board of Representatives, who were also on the professional staff of the Board of Education, voted on this budget.

Subsequently, it was charged, that in so voting, the four representatives in question, were in a conflict of interest situation. The matter was eventually referred to the Board of Ethics.

The specification of charges cited two violations of the Code of Ethics. The first concerned a direct financial interest and the second charged a direct conflict of interest.

The Board of Ethics has found that neither of the charges of direct interest or direct conflict has been substantiated, and, therefore, the charges against the four respondents are dismissed.

However, the Code of Ethics also mentions indirect conflict of interest. Although not a part of the specification of charges, the Board of Ethics felt it proper and desirable to investigate this aspect of the question.

The Board of Ethics was, in fact, encouraged to do so by one of the attorneys for the respondents. During the course of his explanation for the fact that the respondents were advised to refuse to testify at the hearing, Attorney Karl Fleischmann said, "I think it would be useful if you were to provide an opinion which assumed such facts as you think worth assuming, and reach a conclusion about what would or would not be violative of the conflict of interest statutes under the fact as assumed. That would provide guidance to the future." (Official transcript of Board of Ethics hearing of November 7, 1974, pp. 13-131).

The Board of Ethics did indeed reach a conclusion about indirect conflict of interest. It did not do so by assuming any facts at all. Rather, this conclusion is based on Connecticut case law and such facts as the Board had at its disposal.

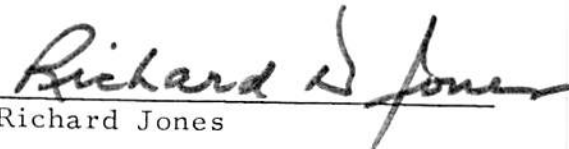
All public officials, appointed and elected, must keep in mind that the public interest is paramount. Therefore, the Board of Ethics recommends that all public officials should not only avoid actual conflict of interest situations but should also avoid the appearance of any such conflict by abstaining from all participation in any such situation.

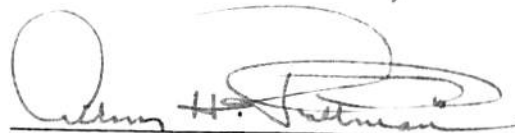
To provide additional guidance for all public officials on the question of conflict of interest, an appendix is attached which

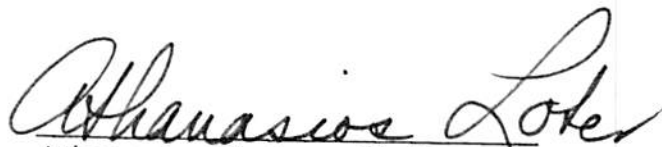
describes in detail the thinking by which the Board of Ethics reached these conclusions. Relevant legal references are also cited.

It is especially recommended that this appendix be studied by the next Charter Revision Commission for guidance with respect to any prospective changes in the Charter having to do with conflict of interest.

Board of Ethics,
City of Stamford


Richard Jones


Allen Kaltman


Athanasios Loter, Chairman

BOARD OF ETHICS OF THE CITY OF STAMFORD

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APPENDIX

INTRODUCTION AND BACKGROUND

Messrs. Anthony Truglia, Joseph DeRose, Theodore Buccuzzi and Vincent Martino, hereinafter referred to as the respondents, were each members of the Board of Representatives of the City of Stamford and members of the professional staff of the Board of Education of the city of Stamford on May 10, 1974, on which date the Board of Representatives held a special meeting to consider and act upon the capital and operating budgets of the City for the fiscal year 1974-1975, as transmitted by the Board of Finance pursuant to the provisions of Chapter 613 of the City Charter. One element of the capital and operating budgets involved a vote on the money allocation for teacher salaries.

None of the respondents made any disclosure on the record of the fact that he was a member of the professional staff of the Board of Education of the City of Stamford or that he had a direct interest in the ruling on this aspect of the budget. According to the minutes of this meeting, at page 10,063, Representative Martino wanted to know if the teachers on the Board were going to abstain, or whether they were going to vote on their own budget. The President then informed Mr. Martino that this is a matter for each individual involved. Representative Guroian then indicated that his latest information from the State was that teachers are employees of the Board of Education and that it would be

untenable for teachers to vote on their budget as members of the Board of Representatives, and for this reason he urged that the teachers on the Board refrain from voting. After the President informed Mr. Guroian that the chair does not have the power to order any individual member to vote any particular way, Mr. Boccuzzi, one of the respondents herein, indicated that by reason of his obligation and responsibility to his constituents, he would vote on the budget. He also indicated that this question had been ruled upon by the Board of Ethics and also by the Corporation Counsel and that he would rely on that opinion. Mr. Boccuzzi was in error. The Board of Ethics had not ruled on this question. Previous Corporation Counsel rulings were not addressed to this type of matter either.

After this discussion, a roll call vote was taken on a motion to reduce the budget of the Board of Education to \$31,000,000.00. All of the respondents herein, with the exception of Anthony Truglia, voted in opposition to this reduction, and the motion lost by a vote of 22 opposed, 18 in favor of the motion. (See minutes, p. 10,064.) On a second motion, to reduce the budget to \$30,748,272.00, all of the respondents herein voted in opposition, and the motion was lost by a vote of 12 in favor and 28 opposed to the motion. (See minutes, p. 10,065.)

A petition signed by 15 members of the Board of Representatives and directed to Corporation Counsel, requested a ruling on a possible conflict of interest. Corporation Counsel referred petitioners to

Board of Ethics, whereupon Messrs. Guroian and Ross so petitioned the Board of Ethics. A hearing was held on June 5, 1974. After introduction of the correspondence received to date, attorneys for the respondents asked for, and received a continuance. At the same time, the legality of the Board of Ethics to function was challenged on several grounds. One of these was based on the fact that, at the time, a vacancy on the Board of Ethics existed, and as the two members belonged to the same political party, there was no minority representation on the Board.

An appeal was made to Corporation Counsel for a ruling, with the next hearing date to be set based on this ruling.

Corporation Counsel's opinion was that the two-man Board of Ethics was a duly-constituted body legally capable of carrying out its duties and that the case before it was within its jurisdiction.

The Board of Ethics then set July 17, 1974 as the date for the next hearing.

On July 16, 1974, a hearing was held in Superior Court, Bridgeport, on a petition for an injunction against the Board of Ethics on the ground that it was not legally constituted. A stay was granted pending action on the appointment of a third man on the Board of Ethics.

The vacancy was finally filled with the appointment of Allen Kaltman by the Mayor in September and his confirmation by the Board of Representatives at its October meeting.

The Board of Ethics then scheduled the hearing for November 7, 1974.

This Board had previously provided the respondents with a draft specification alleging that the vote on the budget was in violation of §2-1 of the Code of Ordinances of the City of Stamford, Code of Ethics, in that, as a school teacher employed by the Board of Education, each respondent voted on a matter in which he had a direct financial interest and engaged in an activity as a member of the Board of Representatives which, as a result of his employment in a professional capacity by the Board of Education, was in direct conflict with the discharge of his official duties as a member of the Board of Representatives. In response to a request by Mr. Carl Fleischmann, attorney for respondent Truglia, the Chairman of this Board by letter dated July 2, 1974, informed Mr. Fleischmann that the law violated by Mr. Truglia is state, municipal, and common law.

The relevant provisions of Section 2-1 of the Code of Ordinances of the City of Stamford, Code of Ethics (Ordinance No. 139 Supplemental) are as follows:

No elected or appointed officer, nor employee or persons otherwise receiving a salary or compensation from municipal funds...shall knowingly...(2) vote, act or participate in official opinions on any matter in which he has a direct or indirect, financial or other private interest, unless he shall first make full and public disclosure of said interests contained therein; shall authorize such officer to vote, act or participate in

official discussions or give official opinions when otherwise prohibited by law...(4) otherwise engage in any... employment of (sic) professional activity or private dealings which is in direct or indirect conflict with the discharge of his official duties.

Thus, there is a dual obligation imposed upon the respondents: before any respondent could vote, act or participate in official discussion regarding the Board of Education budget, he was obligated to make a full and public disclosure of his interest in such budget. But even such disclosure does not authorize such officer to vote, act or participate in official discussions when otherwise prohibited by law.

Second, none of the respondents are permitted to engage in any employment or professional activity which is in direct or indirect conflict with the discharge of his duties as a member of the Board of Representatives.

It is significant to note, with regard to this second obligation, that section 707.1 of the City Charter provides that "No member of the Board of Representatives...shall, during the term for which he is elected, hold any other office or appointment in or under the municipal government." Section 708 of this Charter provides that "No elected or appointed officer, no employee or person otherwise receiving a salary or compensation from municipal funds...shall:

- (1) Be interested directly or indirectly in any contract to which Stamford is a party, either as a principal, surety or otherwise, or in any work to be performed for, or services rendered to or for, the municipality..."

While these provisions of the Stamford Charter provide some guidance in determining this matter, it should be remembered that the issue before this Board is not the legality of a public school teacher serving on the Board of Representatives, but rather the propriety of a vote by individuals who are both staff members of the Board of Education and members of the Board of Representatives on the budget of the Board of Education. This opinion, therefore, will discuss only the applicability of Section 2-1 of the Code of Ethics in this situation.

APPLICABILITY TO TEACHERS

The threshold question in the application of Section 2-1 is whether the respondents were receiving salary or compensation from municipal funds when they voted against reduction of the Board of Education budget. According to a letter from Dr. Maurice J. Ross, acting Commissioner, State Department of Education, dated February 6, 1974, to Mr. Armen Guroian: "In general, public school teachers, except for those employed by the State Board of Education, are not State employees. They are not hired and dismissed by the State agencies, nor are their salaries paid directly out of the State's funds. Neither are they municipal employees, according to an old ruling of the Office of the Attorney General..." (See transcript of hearing of Board of Ethics held on November 7, 1974, at p. 84-85). Despite this old ruling, the fact remains that teacher's salaries are not paid out of State funds, but rather out of funds available by statute to the

school district for educational purposes. Teachers are employees of the Board of Education, and are paid out of funds provided by the municipality. It is clear, therefore, that when they voted, the respondents were receiving compensation from municipal funds within the meaning of Section 2-1 of the Code of Ethics, and that therefore this ordinance is applicable to them. For additional authority in support of the proposition that a teacher is a municipal employee, see Wallingford vs. Board of Education, 152 Conn. 568, 573-74 (1965).

FULL AND PUBLIC DISCLOSURE

The next issue which arises under 2-1 (2), is whether the respondents made a full and public disclosure of their personal interests in the vote on the Board of Education budget. With the exception of respondent Boccuzzi's statement on the record (in response to a suggestion by Mr. Guroian that teachers abstain from voting for their own budget) that he intends to vote on the school budget because of his sense of obligation, which statement in itself is not a disclosure, none of the respondents made any statement on the record disclosing their personal interest in the vote on the Board of Education budget. Any personal knowledge of the other members of the Board of Representatives that the respondents were public school teachers is irrelevant to this requirement, which is one of full and public disclosure.

We, therefore, find that, with the exception of respondent Boccuzzi, each of the respondents did not make proper disclosure if they had the "interest" required by Section 2-1.

DIRECT FINANCIAL AND DIRECT CONFLICT OF INTEREST

The specification of charges stated that, the respondents voted on a matter in which they had a direct financial interest and that they were in a direct conflict of interest situation. The allegation was made that in voting on the budget, the respondents were, in effect, voting on their own salaries.

It is a fact that the budget in question was an all-inclusive one, and that it did include the salary account. However, the salary levels themselves had been negotiated and received final approval by the Board of Representatives in 1973. Thus, no vote taken on the budget at the May 10, 1974 meeting would have had any effect on the salary schedules. Those were legal obligations of the City of Stamford that were not subject to change at that time.

The salary account did not comprise all of the Board of Education budget. The balance of the budget, what may be referred to as the "discretionary accounts," was actually what the Board of Representatives was voting on.

The Board of Education, in submitting a budget proposal, prepares a detailed, itemized document. However, the votes taken by the Board of Representatives on the Board of Education budget are on the budget as a whole. There are no line-by-line votes. Since the salary account is fixed, any changes made by the Board of Representatives affect the discretionary accounts only. Subsequently,

the Board of Education reviews the budget, as finally approved, and allocates its available funds for various purposes.

It is impossible, on the occasion of the vote by the Board of Representatives, to determine how the Board of Education will make its final allocation of funds. It can be stated, therefore, that the respondents had a direct interest in the discretionary accounts, since their final disposition was unknown.

And since the salary account was already fixed, the allegations of direct financial interest and direct conflict of interest were not supported. The Board of Ethics, therefore, dismisses these charges against the respondents.

INDIRECT FINANCIAL INTEREST OR CONFLICT OF INTEREST

The questions of indirect financial interest or indirect conflict of interest were not included in the specification of charges. Nevertheless, the Board of Ethics addressed itself to these questions with the expectation that guidelines for the future may result from such an inquiry. The Board examined Connecticut case law and other evidence available to it.

The clearest statement of the ethical obligations of a public official in Connecticut is found in Katz vs. Brandon, 156 Conn. 521, 539-40, 245 A. 2d 579, 587 (1968), in which the court states as follows:

"Public office is a trust conferred by public authority for a public purpose. State ex rel. State v. Mackie, 82 Conn. 398, 401, 74 A. 759, 26 L.R.A.N.S. 660. His status forbids the public officer from placing himself in a position where his private interest conflicts with his public duty. The good faith of the official is of no moment because it is the policy of the law to keep him so far from temptation as to insure the exercise of unselfish public interest. He must not be permitted to place himself in a position in which personal interest may conflict with his public duty." Low v. Town of Madison, 135 Conn. 1, 8, 60 A. 2d 774, 777; Stocker v. City of Waterbury, 154 Conn. 446, 454, 226 A.2D 514. The evil lies in the creation of a situation tending to weaken public confidence and to undermine the sense of security of individual rights which the citizen and property owner must feel assured will always exist in the exercise of public authority. RK Development Corporation v. City of Norwalk, 156 Conn. 369, 374, 242 A.2d 781; Kovalik v. Planning & Zoning Commission, 155 Conn. 497, 498, 234 A.2d 838; Josephson v. Planning Board of the City of Stamford, 151 Conn. 489, 493, 199 A.2d 690, 10 A.L.R.3d 687; Daly v. Town Planning & Zoning Commission, 150 Conn. 495, 500, 191 A.2d 250.

The ethical standard imposed upon public officials, such as the respondents herein, is one which requires not only an avoidance of any actual conflict of interest, but also the avoidance of the appearance of any such conflict. As stated in the dissenting opinion in Katz vs. Brandon, 156 Conn. 521, 539-40 (1968) of Judge John P. Cotter, Associate Justice and Chief Court Administrator of the Connecticut Supreme Court:

There is no imputation in the present case of any action which is dishonorable. On the contrary, I agree with the majority that the conduct was at all times in good faith. The Connecticut rule...however, is strict in its requirements, and, as stated, there must be no room in the case to cause the public to point with suspicion to circumstances which might create an aura of unfairness or partiality. The rule is based on public policy and not solely on conflict of interest. 'Anything which tends to weaken... (public) confidence and to undermine the sense of security for individual rights which a citizen is entitled to feel is against public policy.'

Judge Cotter's opinion relies upon the leading Connecticut case on conflict of interest, Low vs. Madison, 135 Conn. 1, (1948) in which the court found a conflict of interest even where there was no showing of personal pecuniary interest of the public official involved. Low has been consistently followed in numerous Connecticut cases. See, for example, Anderson vs. Zoning Commission, 157 Conn. 285, 290 (1968); Lake Garda Improvement Assn. vs. Town Planning & Zoning Commission, 151 Conn. 476, 480 (1964); Stocker vs. Waterbury, 154 Conn. 446, 453 (1967); Josephson vs. Planning Board, 151 Conn. 489, 493 (1964); Daly vs. Town Planning & Zoning Commission, 150 Conn. 495, 500 (1963); Furgeson, Jr. et al vs. Zoning Board of Appeals, 29 Conn. Supp. 31 (1970).

That the policy of Low vs. Madison is not restricted to zoning cases is made explicit in Housing Authority vs. Dorsey, 164 Conn. 247, 251 (1973), involving a conflict of interest of a commissioner of a public housing authority who was also a tenant of the same authority. The court stated as follows:

His status forbids him from placing himself in a position where his private interest conflicts with his public duty. His good faith is of no moment because it is the policy of the law to keep him so far from temptation as to insure the exercise of unselfish public interest.

Low v. Madison...This policy is not limited to a single category of public office but applies to all public officials. 'Anything which tends to weaken...(public) confidence and undermines the sense of security for individual rights...is against public policy.'

"It is recognized that judicial review of municipal legislative decisions is narrower than that of other administrative or quasi-judicial agency members because of the reluctance of the Courts to involve itself in political controversy. See Latorre vs. City of Hartford, July 23, 1974, at page 18. However, such restraint is not imposed on this Board whose very purpose and mandate concerns itself with the review of the issues herein."

Connecticut case law is consistent with the common law rule that a public officer owes an undivided duty to the public whom he serves, and is not permitted to place himself in a position which will subject him to conflicting duties or expose him to the temptation of acting in any manner other than in the best interest of the public. As stated in 53 Am. Jur. 2d Public Officers and Employees §281, if a public officer acquires any interest adverse to the public whom he serves, without a full disclosure, "it is a betrayal of his trust and a breach of confidence. One of the most familiar applications of this doctrine is the rule which prevents an officer from having an adverse interest in any contract which he executes on behalf of the public...A member of a board or municipal council cannot validly sit in judgment on his right to office or the emoluments thereof."

For a similar statement of this rule, see 133 A.L.R. 1257, 1258 (Members of governmental board voting on measure involving a personal interest): "A member of a governmental body having a direct personal interest in a matter coming before such body is disqualified from voting thereon..."; and 67 C.J.S. Officers §116: "A public office is a public trust and the holder thereof may not use it directly or indirectly for a personal profit; and officers are not permitted to place themselves in a position in which personal interest may come into conflict with the duty which they owe to the public..."

For an interesting case in which the court found that a member of a Board of Education could not vote on his own salary, see Reckner et al vs. School District of German Tp. et al, 19 A.2d 402 (pa. 1941).

The attorneys for the respondents advised their clients to refrain from testifying at the Board of Ethics hearings. The Board of Ethics, therefore, did not have any direct testimony from any of the respondents.

However, the Board did have the transcript of the hearing on the injunction to restrain the Board from proceeding with its scheduled July 17 hearing. The injunction hearing was held in Superior Court, Bridgeport, on July 16, 1974. Contained therein is sworn testimony by respondent Joseph DeRose which the Board will now cite for purposes of illustration.

At one point (pgs. 2 and 3), the following exchange took place:

"Counsel: If this hearing, which is scheduled for tomorrow is held, and you are found to be in conflict of interest, will that cause you damage?

Mr. DeRose: Yes, I feel it definitely would in terms of being re-elected again should I decide to run for public office, and I also feel it might have some bearing on any future potential as far as my job is concerned, in terms of promotions and what have you."

Taken at face value, this statement raises questions as to possible connections between professional advancement and actions as a public official. Whether any such connections exist is not the point. Rather, it is the appearance of such possibilities that the Board feels is important and should be avoided.

Later in the same hearing, it was brought out that Mr. DeRose was a member of the Appointments Committee of the Board of Representatives. This committee had met to consider the nomination of a candidate to fill the vacancy on the Board of Ethics. The decision was to hold the nomination in committee. The following exchange took place in the court hearing (pg. 13):

"The Court: Did you vote to table this name?

Mr. DeRose: To the best of my knowledge, your Honor, we never took an official vote. I was asked, at that meeting, that night, what my pleasure would be and I made it very clear, that, yes, I was in agreement as far as holding it in committee but if it came to a vote, I would abstain from voting.

The Court: That's what you should have done. Abstained from voting.

Mr. Schwartz (Counsel for Stamford): But he also made it clear that he was opposed, I believe he just said.

Mr. DeRose: Well, I said if a vote were taken, I would abstain."

The Board of Ethics agrees with Mr. DeRose that this was a situation for abstention because of a clear interest in the case. But, the Board goes further in the belief that the abstention should not have been restricted to the vote, but should also have been extended to discussion on the matter. The Board feels that, in this situation, it would have been advisable for Mr. DeRose to have absented himself from the meeting entirely.

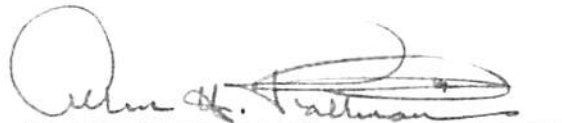
In citing this testimony by Mr. DeRose, the Board once again wishes to emphasize that this was done for illustrative purposes only. There is no implication at all of any wrongdoing on the part of Mr. DeRose. This testimony has been cited because it is the only evidence available to the Board that was deemed relevant.

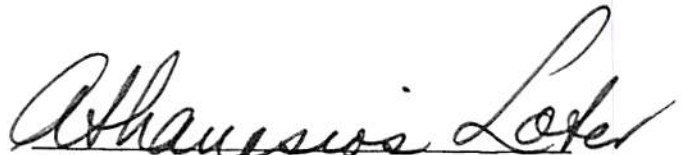
In summary, the Board of Ethics feels as follows regarding conflict of interest. A public office is a public trust. Public officials are not permitted to place themselves in a position in which personal interest may come into conflict with the duty they owe to the public. A public officer owes an undivided duty to the public whom he serves. Anything which tends to weaken public confidence is against public policy.

Therefore, the Board of Ethics strongly recommends that all public officials not only avoid actual conflict of interest, but also avoid the appearance of any such conflict by abstaining from all participation in any such situations. Such participation would include committee meetings and private discussions as well as open meetings and discussion, in addition to actual voting on the issues in question.

Board of Ethics,
City of Stamford


Richard Jones


Allen Kaltman


Athanasios Loter, Chairman