

MAYOR
DAVID R. MARTIN



**CITY OF STAMFORD
OFFICE OF LEGAL AFFAIRS**

888 WASHINGTON BOULEVARD
PO BOX 10152
STAMFORD, CT 06904 - 2152
Tel: (203) 977-4081
Fax: (203) 977-5560

DIRECTOR OF LEGAL AFFAIRS
AND CORPORATION COUNSEL
KATHRYN EMMETT

DEPUTY CORPORATION COUNSEL
VIKKI COOPER

ASSISTANT CORPORATION COUNSEL
BARBARA L. COUGHLAN
CHRIS DELLASELVA
DANA B. LEE
AMY LIVOLSI
BURT ROSENBERG
MICHAEL S. TOMA

Date: March 16, 2016
To: Erin McKenna, Associate Planner
From: Burt Rosenberg, Asst. Corporation Counsel *BR*
Re: Conflict of Interest Issue – BOR Member sitting on RFP
Selection Committee

This is in response to the question you raised by e-mail dated 2-26-16 as follows:

Our department has put out an RFP for a master plan of Boccuzzi Park. Both Representatives from this District are very interested in the project, and have asked us if one of them may sit on the RFP selection committee. The design services should cost about \$100,000. If above \$100,000, it must be approved by the Board of Reps., going first to the Parks and Recreation Committee (PRC). One of the Reps. is on the PRC and is the one most likely to be available to be on the selection committee. Can he be on the RFP selection committee and then recuse himself if and when the contract comes before the PRC for approval? While it is unusual, we sometimes include Representatives on RFP/RFQ selection committees.

We begin our analysis of the issue you raise with the City Code. Section 19-4, entitled "Conflicts of Interest; Interference with Duties, provides:

No officer or employee shall engage in any business or transaction or have a personal, immediate family or business interest, directly or indirectly, which is in material conflict with or incompatible with the proper discharge of his or her official duties or that by creating a divided loyalty might influence or impair his or her independence of judgment and action in the performance of said duties. A conflict of interest exists whenever an officer or employee will more likely than not benefit, disproportionately from other citizens of the city, directly or indirectly, from a decision over which they have influence.

In the facts that you have set forth, the member of the BOR who will be sitting on the Selection Committee does not have a family or business interest in the contract to be awarded pursuant to the RFP, but he or she may have a personal interest in the contract by virtue of having reviewed the proposals of the firms responding to the RFP and interviewing representatives of the firms. The court has observed that the term “personal interest”, as used in ethics rules, “can take the form of favoritism toward one party or hostility toward the opposing party; it is a personal bias or prejudice which imperils the open-mindedness or sense of fairness” which an official is required to possess. *Anderson v. Zoning Commission*, 144 Conn. 285, 290-291 (1968).

The participation of a BOR member on a Selection Committee, and the member’s subsequent participation in a BOR vote [on a BOR Committee and/or at the regular meeting of the BOR] on the resultant contract may violate Section 19-4 if the Board member’s vote is influenced by personal bias or prejudice developed as a result his/her role on the Selection Committee, which is in “material conflict with or incompatible with the proper discharge of his or her official duties” within the meaning of Section 19-4.

Moreover, the courts have ruled that where a “personal interest” exists, public officials should avoid placing themselves in positions where there is even the *possibility* of a conflict. The courts have repeatedly emphasized (with regard to zoning board members) that “[n]eutrality and impartiality of members are essential to the fair and proper operation of ... authorities.” *Fletcher v. Planning & Zoning Commission*, 158 Conn. 487, 507 (1969). The disqualification of a government official from participation in a matter which creates an *appearance of impropriety* is a “prophylactic rule [which] serves the purpose of promoting public confidence in the fairness of the decision-making process and preventing the public official from placing himself in a position where he might be tempted to breach the public trust bestowed upon him. ... *The test is not whether the personal interest does conflict but whether it might reasonably conflict.*” *Petrowski v. Norwich Free Academy*, 199 Conn. 231, 241, appeal dismissed, 479 U.S. 802 (1969); also see, *Josephson v. Planning Board*, 151 Conn. 489, 493-495 (1964) (emphasis added). “The appearance of impropriety created by a public official’s participation in a matter in which he has a ... personal interest is sufficient to require disqualification.” *Nazarko v. Conservation Commission*, 50 Conn. App. 548, 552, cert. denied, 247 Conn. 940 (1980); cited in *Morena v. Historic District Commission*, 50 Conn. Supp. 398 (2007). “Public policy requires that members of public boards cannot be permitted to place themselves in a position in which personal interest may conflict with public duty.” *Zeigler v. Thomaston*, 43 Conn. Sup. 373, 381 (1994), *aff’d*, 232 Conn. 270 (1965).

Having set forth this background and the foregoing principals, there is a risk that a BOR member who has participated in an RFP Selection Committee may develop a “personal interest” in the resultant contract within the meaning of Section 19-4. To avoid either an actual conflict of interest or the appearance of impropriety, it is the recommendation of the Office of Legal Affairs that the member recuse himself/herself from participating in the discussion regarding the

contract, voting, and attempting to influence the vote of other members of the BOR, at both committee meetings and regular meetings of the BOR, if he/she believes that he/she will be unable to cast a fair and impartial vote as a result of having been on the Selection Committee or that it will appear as if that is the case.

Please bear in mind, however, that the decision whether to recuse oneself is properly made by the individual. The Office of Legal Affairs does not compel recusal but is responding to a request for a recommendation based upon the applicable law.

Please let me know if you have any questions regarding this memorandum.

C: Kathryn Emmett, Director of Legal Affairs
Amy LiVolsi, Asst. Corporation Counsel
Valerie Rosenson, Clerk, Board of Representatives (for distribution to all Board members)