



# STATE OF CONNECTICUT

## OFFICE OF STATE ETHICS

### MEMORANDUM

TO: Municipal Ethics Task Force

FROM: Carol Carson, Executive Director *(cc)*

SUBJECT: Impact of Legislative Proposals on the Office of State Ethics

DATE: December 2, 2008

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#### **I. INTRODUCTION**

The Legislative Municipal Ethics Task Force has asked the Office of State Ethics (OSE) to outline the impact that various legislative proposals would have on the OSE:

- A. a mandate that each community adopt an ethics code which meets certain minimum standards
- B. a mandate that each municipality choose between one of three options:
  - 1. Adopt an ethics code with certain minimum standards and create a local ethics commission which would also have minimum standards mandated by state law regarding its makeup, powers and responsibilities for providing opinions and enforcing the code
  - 2. Adopt an ethics code with certain minimum standards and participate in a regional ethics commission
  - 3. Fall under OSE jurisdiction and opt to have the OSE serve as the board of first impression
- C. the establishment of the OSE as the appellate review board for all matters reviewed by local or regional commissions or following OSE "first impression" decisions
- D. a mandate that municipal public officials and employees attend training on the minimum standards

#### **II. DISCUSSION**

##### ***A. EACH MUNICIPALITY ADOPTS A CODE***

- 1. Municipal code enforced at municipal or regional level

Presently, under section 7-148 of the Connecticut General Statutes, municipalities have the authority to adopt, in their discretion, a code of ethical conduct. The proposed mandate would require all municipalities to adopt a code that meets minimum legislative standards.<sup>1</sup>

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<sup>1</sup> Such a code could contain different options depending on the size of the population of the municipality. Attachment 2 is a memorandum to Rep. James Spallone dated October 27, 2008, which outlines such options.

Whether in addition to the mandated adoption of an ethics code, the proposal also includes a requirement that all municipalities establish an ethics advisory and enforcement mechanism through local or regional boards or commissions, such mandate would have no fiscal impact on the OSE.

ESTIMATED COST: \$0

## 2. 1995 Model Municipal Code as a Platform for Minimum Standards

In 1995, the State Ethics Commission, the predecessor of the OSE, created a model code (Attachment 1) pursuant to P.A. 94-172; amended by P.A. 95-291. The minimum standards in the 1995 model code address:<sup>2</sup>

- disclosure and recusal when a conflict of interest arises
- prohibitions on gifts which might influence the action or judgment of municipal officials or employees
- prohibitions on the use of municipal property for personal or political use
- restrictions on representing private interests before the board or commission on which one serves or by which one is employed while on the board and for a period after leaving such board or commission
- prohibitions on the use of position to advance private interests of oneself or others
- confidentiality restrictions
- prohibitions regarding contracting with the municipality

While the 1995 model code needs some updating, the impact of requiring the OSE to update the model code for adoption by municipalities would be minimal. **However**, if legislation requires municipalities to adopt a code that meets minimum standards and requires the OSE to review each code to ensure its compliance with such standards, the addition of an attorney to the staff of the Legal Division of the OSE would likely be required to conduct such reviews, particularly if the legislation required regular reviews of the codes by municipalities.

ESTIMATED COST: \$100,000 or more

### ***B. EACH MUNICIPALITY TO CHOOSE BETWEEN ONE OF THREE OPTIONS:***

1. Adopt an ethics code with certain minimum standards and create a local ethics commission which would also have minimum standards mandated by state law regarding its makeup, powers and responsibilities for providing opinions and enforcing the code

If municipalities choose to have local ethics boards or commissions there would be no fiscal impact on the OSE.

ESTIMATED COST: \$0

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<sup>2</sup> Please note that an amendment of certain underlying state statutes applicable to municipalities would be required before a municipality could adopt some of the model code provisions. In the 1995 model code, these inconsistent provisions dealt with the disclosure and recusal process involving conflicts of interest, applicable penalties for violations of the ethics code, appeals process, and enforcement procedures.

2. Adopt an ethics code with certain minimum standards and participate in a regional ethics commission

If municipalities choose to have regional ethics boards or commissions there would be no fiscal impact on the OSE. (This assumes that the regional ethics boards would be instrumentalities of the member towns and that the OSE would have no involvement in them. If the OSE were to have responsibility for regional boards, the cost could be very significant and would depend on the number of regional boards and the level of involvement of the OSE.)

ESTIMATED COST: \$0

3. Fall under OSE jurisdiction and opt to have the OSE serve as the board of first impression

If municipalities that failed to meet the mandate to create a code by a date certain were then under the jurisdiction of the OSE and the model code, the OSE would need to expand its staff. Depending on the number of municipalities that choose, or by default fell under, the jurisdiction of the OSE, the OSE would need to add one or more attorneys and related support staff in both the enforcement division, to investigate and prosecute violations of the code, and the legal division to interpret the code and provide advice to officials and employees in those towns regarding the application of the code. Questions to consider include how and when municipalities that fall under OSE jurisdiction could opt to switch to their own code and how funding should be structured if many or few towns opt for OSE jurisdiction.

ESTIMATED COST: \$250,000 or more

### ***C. OSE AS THE APPELLATE REVIEW BOARD***

Establishing the OSE as the appellate review board would require additional staff, a minimum of an attorney, a paralegal and an office assistant, to manage the review process. Depending on the requirements of the legislation, the costs for hearings before a judge trial referee and/or the CEAB would also incur costs. Such factors could include whether the appellate review would be de novo, whether the appellate review would review the merits of the matter being reviewed or, as has been suggested, only the process to determine solely that the local or regional board properly reviewed the matter. Issues involving confidentiality should also be considered.

Note that municipalities would potentially incur costs if the OSE is the appellate review board because each matter would have to have a complete record in order for the OSE to conduct a review.

ESTIMATED COST: \$200,000 or more

### ***D. ETHICS TRAINING MANDATE***

Legislation requiring the OSE to provide municipalities with ethics training would require, at a minimum, the addition of a municipal trainer and a support staff position. While many municipalities would require only one or two training a year (one in the day for employees and one at night for board members and volunteers), larger towns and cities could require several trainings

to reach all municipal employees and public officials. Another factor that could affect costs would be whether each municipality had its own code that required training by the OSE or the training provided by the OSE would be related to the model code or minimum standards. In the latter case, municipalities would have to provide additional training. Other training considerations: Would the OSE provide training on the minimum standards? On the public policies that underlie the rules of the code? On ethical values and ethics-based decision making? Another training model to consider would be the establishment of 'ethics audits' provided to municipalities by the OSE. These audits would review local codes, commission records and other practices related to ethics. Such a model would involve increased costs.

The OSE could, at no additional cost, create and maintain an online training program similar to the state online training program now available at the OSE website and other electronic media, such as DVDs and streaming video could be created at minimal cost.

ESTIMATED COST: \$120,000 or more

### **III. SUMMARY**

The Municipal Ethics Task Force has a wide range of options when taking into consideration the fiscal impact on both the OSE and municipalities. If the task force recommends a specific course of action, the OSE is ready to provide assistance to the legislature and all the interested parties in addressing specific legislative proposals regarding municipal ethics and their impact on the OSE.

CODE OF ETHICS  
FOR MUNICIPALITIES AND SPECIAL DISTRICTS  
MODEL CODE  
August 21, 1995

Statement of Purpose.

Public office is a public trust. The trust of the public is essential for government to function effectively. Public policy developed by government officials and employees affects every citizen of the municipality, and it must be based on honest and fair deliberations and decisions. This process must be free from threats, favoritism, undue influence, and all forms of impropriety so that the confidence of the public is not eroded. By enacting this Code, this municipality seeks to avoid any loss of trust and to maintain and increase the confidence of our citizens in the integrity and fairness of their government.

Section 1-1. Definitions.

- (a) "Business" means any entity through which business for profit or not for profit is conducted including a corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, or self-employed individual.
- (b) "Business with which he is associated" means a business of which the person or a member of his immediate family is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stock of any class.
- (c) "Confidential information" means information, whether transmitted orally or in writing, which is obtained by reason of the public position or office held and is of such nature that it is not, at the time of transmission, a matter of public record or public knowledge.
- (d) "Commission" means the municipal ethics commission established in section 1-2.
- (e) "Financial interest" means any interest with a monetary value of \$100 or more or which generates a financial gain or loss of \$100 or more in a calendar year.
- (f) "Gift" means anything of value, including entertainment, food, beverage, travel, and lodging given or paid to a public official or public employee to the extent that consideration of equal or greater value is not received. A gift does not include:
  - (1) a political contribution otherwise reported as required by law or a donation or payment as described in subdivision (9) or (11) of subsection (b) of 9-333b;
  - (2) services provided by persons volunteering their time;
  - (3) a commercially reasonable loan made on terms not more favorable than loans made in the ordinary course of business;

(4) a gift received from (A) an individual's spouse, fiancé or fiancée, (b) the parent, brother or sister of such spouse or such individual, or (C) the child of such individual or the spouse of such child;

(5) goods or services which are provided to the municipality and facilitate governmental action or functions;

(6) a certificate, plaque or other ceremonial award costing less than one hundred dollars;

(7) a rebate or discount on the price of anything of value made in the ordinary course of business without regard to that person's status;

(8) printed or recorded informational material germane to governmental actions or functions;

(9) items of nominal value, not to exceed ten dollars, containing or displaying promotional material;

(10) an honorary degree bestowed upon a public official or public employee by a public or private university or college;

(11) a meal provided at an event and/or the registration or entrance fee to attend such an event, in which the public employee or public official participates in his official capacity;

(12) a meal provided in the home by an individual who resides in the municipality;

(13) gifts in-kind of nominal value not to exceed \$25.00 tendered on gift-giving occasions generally recognized by the public including Christmas, Hanukkah, birthdays, the birth or adoption of a child, weddings, confirmations or bar/bat mitzvahs, provided the total value of such gifts in any calendar year do not exceed fifty dollars.

(g) "Immediate family" means any spouse, child or dependent relative who resides in the individual's household.

(h) "Individual" means a natural person.

(i) "Individual with whom one is associated" means an individual with whom the person or a member of his immediate family mutually has an interest in any business.

(j) "Official responsibility" means the direct administrative or operating authority, whether intermediate or final and whether exercisable personally or through subordinates, to approve, disapprove, or otherwise direct government action.

(k) "Person" means an individual, sole proprietorship, trust, corporation, union, association, firm, partnership, committee, club or other organization or group of persons.

(l) "Personal interest" means an interest in any action taken by the municipality in which an individual will derive a nonfinancial benefit or detriment but which will result in the expenditure of municipal funds.

(m) "Public employee" means a person employed, whether part-time or full-time, by the municipality or a political subdivision thereof.

(n) "Public official" means an elected or appointed official, whether paid or unpaid or full or part-time, of a municipality or political subdivision thereof, including candidates for the office; and shall also include a district officer elected pursuant to Conn. Gen. Stat. §7-327.

(o) "Special district" means a district established pursuant to Conn. Gen. Stat. §7-324.

(p) "Municipality" shall include any special district contained therein.

Section 1-2. Municipal ethics commission. Members; appointment; qualifications; vacancies; political activity.

(a) There shall be a municipal ethics commission consisting of five members. The members shall be appointed by unanimous vote of the Board of Selectmen (Town Council) for a term of three (3) years, except that, of the initially appointed members, one (1) shall serve for one (1) year, two (2) for two (2) years, two (2) for three (3) years. No individual shall be appointed to more than one three-year term, provided that members may continue in office until a successor has been appointed. No more than three shall be members of the same political party.

(b) All members shall be electors of the municipality. No member shall (1) hold or campaign for any public office; (2) have held public office or have been a candidate for public office for a two-year period prior to appointment; (3) hold office in any political party or political committee; or (4) serve as a member of any other municipal agency.

(c)(1) Although any member or employee of the Commission shall have an unrestricted right to vote, make political contributions, attend fundraising or other political events, no member or employee shall publicly support any candidate for any municipal office subject to the Commission's jurisdiction. An individual would be publicly supporting a candidate by, for example, volunteering as a campaign worker, giving a speech at a political event or formally endorsing a candidate. (2) No candidate for political office may disseminate information which indicates that a Commission member or employee supports his or her candidacy.

(d) The commission shall elect a chairperson who shall preside at meetings of the commission and a vice-chairperson to preside in the absence of the chairperson. Three members shall constitute a quorum. A majority vote of the commission shall be required for action of the commission. The chairperson or any three members may call a meeting.

Section 1-3. Duties of commission re reports, advisory opinions, memoranda, and regulations. Employment of necessary staff.

(a) The commission shall: (1) Compile and maintain a record of all reports, advisory opinions, statements, and memoranda filed by and with the commission to facilitate public access to such reports and statements; (2) issue advisory opinions with regard to the requirements of this code upon the request of any person. Advisory opinions rendered by the commission, until amended or revoked, shall be binding on the commission and shall be deemed to be final decisions of the commission. Any advisory opinion concerning the person who requested the opinion and who acted in reliance thereon, in good faith, shall be an absolute defense in any matter brought under the provisions of this code; (3) report annually on or before February 1 to the [Board of Selectman or Town Council or Special district board] summarizing the activities of the commission.

(b) The commission may adopt, after a public hearing, rules and regulations not inconsistent with this Code for the administration and implementation of the Code.

(c) The commission may employ necessary staff or outside counsel within available appropriations.

Section 1-4. Complaints. Procedures. Time limits. Investigation; notice; hearings. Damages for complaints without foundation.

(a)(1) Upon the complaint of any person on a form prescribed by the commission, signed under penalty of false statement, or upon its own complaint, the commission shall investigate any alleged violation of this code. (2) Not later than ten (10) days after the receipt or issuance of such complaint, the commission shall provide notice of such receipt or issuance and a copy of the complaint by registered or certified mail to any respondent against whom such complaint is filed and shall provide notice of the receipt of such complaint to the complainant. (3) If the complaint has been filed by a member of the public, the commission shall review the complaint to determine whether or not the allegations contained therein constitute a violation of any provision of the Code. If the commission determines that the complaint does not allege sufficient acts to constitute a violation, the commission shall dismiss the complaint and duly notify the complainant and respondent by registered or certified mail. (4) IF the commission determines that the complaint alleges sufficient acts to constitute a violation, then within thirty (30) days after so determining, the commission shall fix a date for the commencement of the hearing on the allegation contained therein. The hearing date regarding any complaint shall be not more than sixty (60) days after the filing of the complaint.

(b)(1) In the conduct of its investigation of an alleged violation of this code, the commission shall have the power to hold hearings, administer oaths, examine witnesses, receive oral and documentary evidence, subpoena witnesses, and require the production for examination by the commission of any books and papers which the commission deems relevant in any matter under investigation or in question. In the exercise of such powers, the commission may use the services of the municipal police, who shall provide the same upon the commission's request. (2) The respondent shall have the right to appear and to be represented by legal counsel and to examine and cross-examine witnesses.



(c) The commission shall make no finding that there is a violation of any provision of the code except upon the concurring vote of at least four of its members.

(d) Any hearing conducted by the commission shall be governed by the administrative rules of evidence.

(e) No complaint may be made under this code except within five years next after the violation alleged in the complaint has been committed.

(f) No person shall take or threaten to take official action against an individual for such individual's disclosure of information to the commission under the provisions of this code. After receipt of information from an individual, the commission shall not disclose the identity of such individual without consent unless the commission determines that such disclosure is unavoidable during the course of an investigation.

Section 1-5. Confidentiality of complaints, evaluations of possible violations and investigations.  
Publication of findings.

(a) Unless the commission makes a finding of a violation, a complaint alleging a violation shall be confidential except upon the request of the respondent.

(b) Prior to the filing of a complaint, the commission may conduct a preliminary investigation to determine whether the filing of a complaint is warranted. This preliminary investigation shall be confidential except upon the request of the respondent. If the investigation is confidential, any allegations and any information supplied to or received from the commission shall not be disclosed during the investigation to any third party by a complainant, respondent, witness, designated party, or commission or staff member.

(c) If the commission makes a finding of no violation, the complaint and the record of its investigation shall remain confidential, except upon the request of the respondent. No complainant, respondent, witness, designated party, or commission or staff member shall disclose any third party any information learned from the investigation, including knowledge of the existence of a complaint, which the disclosing party would not otherwise have known. The commission shall inform the complainant and the respondent of its finding by registered or certified mail not later than three business days after termination of the hearing or investigation.

(d) The commission shall make public a finding of a violation not later than five business days after the termination of the hearing. At such time, the entire record of the investigation shall become public. The commission shall inform the complainant and the respondent of its finding and provide them a summary of its reasons for making such a finding by registered or certified mail not later than three business days after termination of the hearing.

(e) Any respondent aggrieved by a decision of the commission regarding a finding of a violation may, within thirty days, take an appeal to the superior court for the judicial district in which the municipality is located.

#### Section 1-6. Penalties.

(a) Violation of any provision of this Code shall constitute grounds for, and may be punished by (1) public censure and reprimand; (2) in the case of a public employee, dismissal from employment or suspension from employment for not more than 90 days without pay; (3) a civil penalty of not more than \$1,000 per violation; or (4) restitution of any pecuniary benefits received because of the violations committed.

#### Section 1-7. Conflicts of interest.

(a) No public employee or public official shall engage in or participate in any business or transaction, including outside employment with a private business, or have an interest, direct or indirect, which is incompatible with the proper discharge of his official responsibilities in the public interest or which would tend to impair his independent judgment or action in the performance of his official responsibilities.

(b)(1) No public employee or public official shall solicit or accept any gift from any person which to his knowledge is interested in any pending matter within such individual's official responsibility. (2) If a prohibited gift is offered, he must refuse it, return it, pay the donor the full value of the gift, or donate it to a non-profit organization provided he does not take the corresponding tax write-off. Alternatively, it may be considered a gift to the municipality provided it remains in the municipality's possession permanently.

(c)(1) A public employee or public official shall refrain from voting upon or otherwise participating in any matter on behalf of the municipality if he, a business with which he is associated, an individual with which he is associated, or a member of his immediate family, has a financial or personal interest in the transaction or contract, including but not limited to the sale of real estate, material, supplies or services to the municipality. (2) If such participation is within the scope of the public employee's or public official's official responsibility, he shall be required to provide written disclosure, which sets forth in detail the nature and extent of such interest, to the Commission. (3) Notwithstanding the prohibition in subsection (c)(1), a public employee or public official may vote or otherwise participate in a matter if it involves a determination of general policy and the interest is shared with a substantial segment of the population of the municipality.

(d)(1) Except for a public official who receives no compensation for his service to the municipality other than per diem payments and reimbursement of expenses, no public employee or public official shall appear on behalf of private interests before any board agency, or committee of the municipality. (2) Except for a public official who receives no compensation for his service to the municipality other than per diem payments and reimbursement of expenses, no public employee or public official shall represent private interests against the interest of the municipality in any litigation to which the municipality is a party.

(e) Nothing contained in this code shall prohibit or restrict a public employee or public official from appearing before any board or commission of the municipality on his own behalf, or from

being a party in any action, proceeding or litigation brought by or against the public employee or public official to which the municipality is a party.

(f) No public employee or public official shall disclose confidential information concerning municipal affairs, nor shall he use such information for the financial interests of himself or others.

(g) No public employee or public official shall request or permit the use of municipal-owned vehicles, equipment, facilities, materials or property for personal convenience or profit, except when such are available to the public generally or are provided as municipal policy for the use of such public employee or public official in the conduct of official business.

(h) No public employee or public official, or a business with which he is associated, or member of his immediate family shall enter into a contract with the municipality unless it is awarded through a process of public notice and competitive bidding.

(i) No public employee or public official may use his position or office for the financial benefit of himself, a business with which he is associated, an individual with which he is associated, or a member of his immediate family.

(j) No public employee or public official shall accept a fee or honorarium for an article, appearance or speech, or for participation at an event, in his official capacity.

(k) No public employee or public official, or member of such individual's immediate family or business with which he is associated, shall solicit or accept anything of value, including but not limited to, a gift, loan, political contribution, reward or promise of future employment based on any understanding that the vote, official action or judgment of the public employee or public official would be or had been influenced thereby.

#### Section 1-8. Paid consultants of the municipality.

(a)(1) No paid consultant of the municipality shall represent a private interest in any action or proceeding against the interest of the municipality which is in conflict with the performance of his duties as a consultant. (2) No paid consultant may represent anyone other than the municipality concerning any matter in which he participated personally and substantially as a consultant to the municipality. (3) No paid consultant shall disclose confidential information learned while performing his duties for the municipality nor shall he use such information for the financial interests of himself or others.

#### Section 1-9. Former public employees/officials.

(a) No former public employee or public official shall appear for compensation before any municipal board or agency in which he was formerly employed at any time within a period of one year after termination of his service with the municipality.

(b) No former public employee or public official shall represent anyone other than the municipality concerning any particular matter in which he participated personally and substantially while in municipal service.

(c) No former public employee or public official shall disclose or use confidential information acquired in the course of and by reason of his official duties, for financial gain for himself or others.

(d) No former public employee or public official who participated substantially in the negotiation or award of a municipal contract obliging the municipality to pay an amount of \$100,000 or more, or who supervised the negotiation or award of such contract shall accept employment with a party to the contract other than the municipality for a period of one year after such contract is signed.

Section 1-10. Statements of financial interests. Filing requirements.

(a)(1) All public officials and such public employees as the Mayor [First Selectman] shall designate shall file, under penalty of false statement, a statement of financial interests for the preceding calendar year with the commission on or before the May first next in any year in which he holds such a position. Any such individual who leaves his office or position shall file a statement of financial interests covering that portion of the year during which he held his office or position. The commission shall notify such individuals of the requirements of this subsection within thirty days after their departure from such office or position. Such individuals shall file such statement within sixty days after receipt of the notification.

(b) The statement of financial interests shall include the following information for the preceding calendar year in regard to the individual required to file the statement and his spouse and dependent children residing in the individual's household: (1) The names of all businesses with which associated; (2) the names of all individuals with which associated; (3) the names of all employers; (4) the names and addresses of specific clients, patients, and customers, except when such information is privileged against disclosure under the law or where the ethical standards of a professional group, society or organization of which the individual is a member, prohibit such disclosure without the consent of the client, patient or customer involved, without the consent of the client, patient or customer involved, who provided more than ten thousand dollars of net income including clients and customers who provided more than ten thousand dollars of net income to any business with which the individual was associated, amounts of income not to be specified; (5) the name of securities in excess of ten thousand dollars at fair market value owned by such individual, spouse or dependent children or held in the name of a corporation, partnership or trust for the benefit of such individual, spouse or dependent children; (6) all real property located with the municipality whether owned by such individual, spouse or dependent children or held in the name of a corporation, partnership or trust for the benefit of such individual, spouse or dependent children; (7) the names and addresses of creditors to whom the individual, his spouse or dependent children, individually, owed debts of more than ten thousand dollars; and (8) any leases or contracts with the municipality held or entered into by the individual or a business with which he was associated.

(c) The statement of financial interests filed pursuant to this section shall be a matter of public information.

(d) Any individual who is unable to provide information required under the provisions of subsection (b) of this section by reason of impossibility may petition the commission for a waiver of the requirements.

Section 1-11. Distribution of Code.

The Town Clerk shall cause a copy of this Code of Ethics to be distributed to every public employee and public official within 60 days after enactment of this code. Each public employee and public official shall be furnished a copy before entering upon the duties of his office or employment. A signed receipt for all copies shall be returned to the town clerk and retained on file.

# Memo

**To:** Rep. James Spallone  
**From:** Carol Carson, Executive Director (cc)  
**cc:** Sen. Gayle Slossberg  
**Date:** December 2, 2008  
**Re:** Municipal Ethics Code

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I appreciated meeting with you recently to discuss municipal ethics. As we discussed, a tiered ethics code would create one standard but allow municipalities, based on their size, different mechanisms to achieve compliance. Below is a brief description of a tiered code, as you requested.

Municipal ethics codes seek to protect the interests of government while at the same time attracting qualified citizens to serve the government. Codes generally address these concerns with three types of mechanisms: prohibition, permission from a higher authority, and disclosure. Connecticut has 169 municipalities: 72 have populations of 10,000 or fewer citizens, 80 have populations between 10,000 and 50,000 citizens and 17 have populations greater than 50,000<sup>1</sup>

## A three-tiered code

Currently, under Connecticut General Statutes § 7-148h (b), *elected* municipal officials who have a substantial conflict with the proper discharge of the official duties or employment may not take official action on a matter. Such a person has a substantial conflict "if he have reason to believe or expect that he, his spouse, a dependent child, or a business with which he is associated will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his official activity" unless "any benefit or detriment accrues . . . to no greater extent than any other member of such profession, occupation or group."

A code of ethics could establish consistent minimum standards for all municipalities but provide for a three-tiered system of addressing the substantial conflicts of interest restrictions through prohibition, permission from a higher authority and disclosure. Under the three-tiered code scheme, the aforementioned prohibition under § 7-148h (b) would remain in place with respect to all elected municipal officials, however for the remaining town or city officials and employees, whether hired or appointed, paid or unpaid, the following plan could be implemented.

For the 17 large cities, prohibitions would, for the most part, be absolute, as they are in state government for state employees. In the 80 medium-sized municipalities, the prohibitions would exist but the principle of permission from a higher authority would allow non-elected officials to participate provided that they disclose their interest and a higher authority – their appointing authority, often the city council, mayor or board of selectmen or the other members of the board on which they serve – decides whether the prohibition should stand or the non-elected official should be allowed to act. Specifically, in the medium-sized cities, this prohibition would hold, unless the official or employee 1) disclosed in writing the matter and the interest that is in substantial conflict and 2) his or her appointing authority or other members of the board or commission, approved an exception allowing the individual to take official action. The exception would be in writing if it is provided by an appointing authority or by vote if it is from a board or commission. Any written

exceptions relied on at public meetings would become part of the record of the meeting; those not related directly to a public meeting would be filed with the municipal clerk. Alternatively, an official or employee could abstain from the matter; an official or employee who abstains from a matter would not be required to disclose why he or she is abstaining.

In the remaining 72 municipalities with populations of less than 10,000, written disclosures, but no requirement for permission from a higher authority, would be sufficient to comply with the prohibition. In providing a written disclosure, the town official or employee would describe the matter requiring action and the nature of the conflict. Such disclosures would follow the filing protocol described above.

The prohibition standard in the large cities recognizes that their governments are complex operations where the risk of mischief is great. The mechanisms of disclosure and permission bring transparency and a great deal of local control to the medium- and small-sized municipalities.

Similarly, large municipalities could require the filing of statements of financial interests, medium sized municipalities could elect to require such filings and small towns would be exempt, except public officials would have to provide certain disclosures if a matter before them affected their employee or property, as outlined by the code.

#### Other states

The Massachusetts State Ethics Commission has jurisdiction over municipal officials and employees. It provides tiers based on whether municipal officials and employees, regardless of the size of the municipality, have significant connections and responsibilities to the municipality<sup>2</sup> and, in some instances, provides exceptions based on population.

The New York state ethics code requires financial disclosure in counties, cities, towns, and villages of 50,000 or more and requires additional disclosure in New York City. New York state law also mandates a local ethics code in counties, cities, towns, villages, school districts, and fire districts but not in other municipalities (water districts, etc.), which are nonetheless subject to certain state provisions (as are counties, cities, towns, villages, school districts, and fire districts).

In Texas, state law requires personal financial disclosure by city council members, city managers and city attorneys only in Cities over 100,000 in population. In Ohio, there is no difference in the application of the law based on size of municipality but elected city officials who are compensated more than \$16,000/year for their public service have a higher level of financial disclosure than elected city officials whose compensation falls below that threshold and village officials are specifically exempted from the financial disclosure requirement.

In Maryland, the state ethics law requires that all municipalities have ethics laws that are "substantially similar" to the state's law except they "may be modified to the extent necessary to make the provisions relevant to the prevention of conflicts of interest in that jurisdiction." The state also has published two model laws in its regulations - one for larger jurisdictions that is 12 pages long and one for smaller ones that is four pages long. The municipality may choose the appropriate version. The prohibitions in the long version are significantly more restrictive than in the short version.<sup>3</sup> In addition, the Commission, by statute, may exempt or modify the requirements as to a municipal corporation if the Commission finds that because its size the application would be an unreasonable invasion of privacy; would significantly reduce the availability of qualified individuals for public service; and is not necessary to preserve the purposed of the law. In the past, the Commission looked at the population, authority of the local government, size of municipal budget, and staffing as factors in determining whether a municipality would be totally exempt, or partially exempt, e.g. no lobbying registration requirement.

West Virginia and Alabama laws apply to all municipalities and make no distinction based upon the size of the city or town.

### Conclusion

As you can see, other states have approached municipal ethics in many different ways. Minimum standards for all municipalities with different mechanisms for compliance based on the size of the town would provide a uniform body of law and address the needs of the various sized municipalities in Connecticut. In a separate memorandum, as requested by Sen. Slossberg, I will address the impact of various proposals on the Office of State Ethics.

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<sup>1</sup> As of July 1, 2006. Source: State of Connecticut Department of Health.

<sup>2</sup> Massachusetts restrictions (place limits on what municipal employees can do on the job, after hours and when they leave public service. The definition of municipal employee is far-reaching and includes any person elected or appointed, paid or unpaid, full-time or part-time and, in some instances, consultants. It also defines a category of "special" municipal employees who face fewer restrictions. Special municipal employees are designated by the municipality's governing board if they meet certain qualifications. They are: unpaid; paid for less than 800 hours over 365 days; or by classification or by terms of contract allowed to do personal and private work during normal working hours. By statute, mayors, city councilors and selectmen in towns with a population greater than 10,000 may not be "special" municipal employees. While municipal employees generally may not represent third parties before the municipality or have a financial interest in contracts with the municipality, special municipal employees may, for example, represent third parties, except before the board they serve, and may have financial interests in contracts with the municipality with similar restrictions. All non-elected municipal employees may participate in matters affecting their or their families' or businesses' financial interest if 1) they disclose in writing and 2) their appointing authority approves in writing their participation. An exception allows any municipal employee to participate in matters of general policy if their interest is shared with a substantial segment of the population of the municipality.

Massachusetts' restrictions most clearly recognize the size of municipalities in addressing municipal employees holding financial interests in contracts. The general rule is that municipal employees can't hold such contracts. However, there are numerous exceptions, several of which make the prohibition less restrictive on specials who are not involved with the contracting agency or who receive permission from the selectmen or city council if they are involved with the contracting agency. Contracts include contracts for employment. The law also provides that an employee in a town having a population of less than 3,500 can hold more than one position with approval from the selectmen.

<sup>3</sup> For example, the restriction on taking official action on matters affecting others is different in two respects: first, the scope of the family is spouse or dependent child in the short version and it is spouse, parent, child, brother or sister in the long version; second, the scope of the business is only "a business entity with which they are affiliated" in the short version, but includes in the long version any business in which the public official has a direct financial interest, is an officer, director, trustee, partner or employee, in which he or his family members is negotiating or has any arrangement concerning prospective employment, any entity that contracts with the official or his family members if it could result in a conflict, any entity doing business with the town in which a direct financial interest is owned by an entity in which the official has a direct financial interest, or an entity that would affect a creditor. A "knowing" element is part of most of the businesses in the long form. Finally this section goes on to allow participation if a quorum cannot be reached and the disqualified persons disclose the conflict.