



Office of City Solicitor
City of Northampton
210 Main Street, Room 12
Northampton, MA 01060

December 17, 2014

Please reply to:

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City Solicitor

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Mayor David J. Narkewicz
City of Northampton
City Hall
Northampton, MA 01060

RE: Conflict of Interest
Compensation of Elected Officials – Mayor

Dear Mayor Narkewicz:

You have requested my opinion regarding a potential conflict of interest that may arise should the City Council vote to raise the mayor's salary in accordance with the final report of the Elected Officials Compensation Advisory Board, dated October 27, 2014, and amended on October 31, 2014. The facts are as follows:

In accordance with St. 2012, c. 277, § 2 (10), a so-called outside section of the Charter of the City of Northampton, the City Council was required to enact an ordinance establishing an Elected Official Compensation Advisory Board. The Council established the Board and, on October 27, 2014, the Board issued its final report regarding elected official compensation. The Board recommended that the compensation of certain elected officials be increased, including both city councilors and the mayor. Both § 2-4 and § 3-1(c) of the Charter require that any amendment to the ordinance increasing the compensation of the councilors or the mayor, respectively, must provide "that the salary increase is to take effect upon the organization of the city government following the next regular city election." The President of the City Council has proffered a proposed amendment to § 5-5A of the Code of Ordinances increasing the mayor's salary. Such increase would be effective upon the organization of the City government after the 2015 city election. However, because the Charter provides for a four-year term for the mayor, the position of mayor will not be on the 2015 election ballot. Therefore, should the Council pass the proposed amendment proffered by the Council President, the question arises as to whether you may approve or veto the measure without violating any of the proscriptions contained in M.G.L. c. 268A.

M.G.L. C. 268A, § 19 provides that "a municipal employee who participates as such an employee in a particular matter in which to his knowledge he ... has a financial interest, shall be

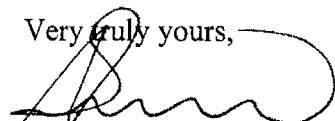
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punished by a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both.” The word “participate” is defined as “participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise.” M.G.L. c. 268A § 1. Clearly, approval or disapproval by you of the proposed increase in the mayor’s compensation would constitute participation in a particular matter in which you have a financial interest.¹ For that reason, my opinion is that you may not approve or disapprove a midterm increase in the mayor’s compensation.

Section 19, quoted above, prohibits you from participating in a matter such as mayoral salary increase in which you have a financial interest. In my opinion, you would not violate § 19 by failing to act on the proposed salary increase for a period of ten days, thereby allowing it to be deemed approved and in force in accordance with § 3-6 of the Charter. Nothing in the definition of “participate” suggests that failing to act constitutes participation.

Please let me know if you need anything further in this regard.

Very truly yours,



Alan Seewald
City Solicitor

AS/A

¹ In a related matter, the State Ethics Commission has ruled that participation by city councilors who were contemplating a run for mayor in a vote to increase the mayor’s salary was not a conflict where the increase would not take effect until after the next election in which the position of mayor would be on the ballot. The Commission ruled that where there is an intervening election and the vote to increase the salary would take place before the nomination deadline, the financial interest of councilors contemplating a run for mayor was too speculative to constitute an ethical violation. EC-COI-87-16. Here, there is no intervening mayoral election, and the Mayor’s financial interest is not speculative.