

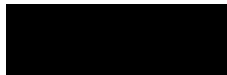


Town Hall
238 Danbury Road
Wilton, CT 06897

Council on Ethics:
Thanh Tsoi, Chair
Elizabeth Edwards, Vice Chair
Rhonda Brown, Secretary
Tamara Conway

September 8, 2023

Mark C. Shaner



Dear Mr. Shaner,

We received your request for an advisory opinion received by the Town Clerk on August 18, 2023 and self-disclosing a potential conflict of interest.

The Council's response is attached.

Sincerely,

Thanh Tsoi
Chair, Council on Ethics

Devin A. Deland
TOWN CLERK

2023 SEP 11 P 12:15

RECEIVED
WILTON, CT.

**Advisory Opinion
Wilton Council on Ethics
September 8, 2023**

**Re: Conflict of Interest Question Concerning Board of Education
Candidates/Members Whose Relatives Work for the Wilton Schools**

Summary: In August 2023, the Wilton Council on Ethics (the "Council") was notified by two candidates for the Wilton Board of Education (the "BOE" or "Board") that each is married to an individual employed as a teacher by the Wilton Public Schools. The candidates indicated that as members of the Board, if a potential Conflict of Interest were to arise in connection with their service on the BOE, they would recuse themselves or seek an Advisory Opinion from the Council.

The Council has accepted this notification as a request for an Advisory Opinion as to: 1) whether a potential Conflict of Interest is presented when a BOE member is married to an individual employed by the Wilton Public Schools and 2) if a potential Conflict of Interest is presented, are there remedies in the Code of Ethics sufficient to mitigate a potential conflict?

Conflict of Interest Analysis: In the Bylaws of the Wilton Board of Education, its General Duties are described as including that the BOE "shall determine all policies to be implemented in the administration of the schools."

Sixteen of the Board's specific Powers and Duties are listed in the Bylaws. They include, but are not limited to, the power to:

- A. Create, abolish, modify and maintain such positions, schools, divisions and classifications as may be necessary for the efficient administration of the educational enterprise.
- B. To elect a Superintendent of Schools in accordance with state statutes.
- C. To consider and adopt an annual budget, prepared by the Superintendent of Schools.
- D. To determine the number, classification, duties and remuneration of employees.
- E. To establish policies for employment, promotion and dismissal of personnel in accordance with the state statutes.
- F. To provide for the performance evaluation of personnel.
- G. To initiate and approve the acquisition and disposition of school sites, to initiate and approve plans for school buildings.
- H. To consider any specific recommendations made by the Superintendent of Schools.
- I. To keep the citizenry informed of purposes, values, conditions and needs of public education in the Town.
- J. To consider, revise and adopt any changes in the curriculum.
- K. To take any other actions required or permitted by law.
- L. To make reasonable provision to implement the educational interests of the State, as defined by law, so that
- M. each child shall have for the period prescribed in the General Statutes equal opportunity to receive a suitable program of educational experiences;
- N. the school district shall finance at a reasonable level an educational program designed to achieve this end;

- O. the school district shall provide educational opportunities for its students to interact with students and teachers from other racial, ethnic and economic backgrounds;
- P. the mandates in the General Statutes pertaining to education within the jurisdiction of the State Board of Education shall be implemented.

At least four of these duties, or 25% of the Board's responsibilities, directly involve decision making about personnel matters – creation or abolishing of positions, determining the number, classification, duties and remuneration of employees, establishing policies for employment, promotion and dismissal of personnel and providing for the performance evaluation of personnel. Other Board duties, such as considering and adopting an annual budget, could indirectly involve personnel decisions.

It is the opinion of the Council that, based on the definitions in the Code of Ethics for the Town of Wilton (the "Code"), serving as a BOE member when a relative is employed by the Wilton Schools presents a potential Financial Conflict of Interest and/or a Potential Personal Conflict of Interest in any personnel-related decision on which the member is asked to deliberate.

- The Code defines a Relative as "[a]ny person related to an official or employee by blood, adoption, or marriage." (Code Section 3.3(A))
- By virtue of having a Relative employed by the schools, a BOE member would likely have a financial interest as defined in the Code, i.e., "[a]ny interest representing an actual or potential economic gain or loss, which is neither de minimis nor shared by the general public, that accrues to an official or employee, to a relative, or to a business." (Section 3.3(A)) A decision related to employees of the schools – whether on the number of positions, appraisal of performance or remuneration, would potentially impact the member's Relative and create a potential financial Conflict of Interest.
- A BOE member would likely have a personal "interest representing an actual or potential noneconomic benefit or detriment, which is neither de minimis nor shared by the general public" (Section 3.3(A)) in decisions that could impact the terms and conditions of employment of a Relative, creating a potential personal Conflict of Interest.

Remedies Analysis: The remedies to mitigate a potential Conflict of Interest that are provided in the Code are Recusal and requesting an Advisory Opinion (Section 3.3(B)(2)(a)). In this case, Recusal for a BOE member from all personnel-related deliberation, decision-making and actions would likely be ineffective remedy, given the number and significance of personnel-related matters included in BOE members' duties. Requesting an Advisory Opinion each time a personnel-related decision came before the Board would also be inefficient and unproductive. The workings of the BOE would be substantially impacted if each personnel-related decision had to be postponed. Every time an Advisory Opinion was requested, the Council would convene to review the question presented and prepare a formal opinion.

Whether Recusal or Advisory Opinions were adequate in the case of a particular board duty would be a fact-specific determination. However, even in a specific decision where the Board member recused themselves or an Advisory Opinion was issued recommending Recusal, it is possible that a member would have access or appear to have access to related information by virtue of their BOE position that would be sufficient to represent a "potential noneconomic benefit ... which is neither de minimis nor shared by the general public." In such a case, neither remedy would be sufficient to eliminate the appearance of a personal Conflict of Interest that arose from the election of a person to be a Board member whose Relative is a school employee.

Disclosure: The Code encourages candidates for public office to “disclose during the process of election, appointment or employment anything addressed in this Code that might impair their ability to perform in the office or position that they seek or for which they are being considered.” (Section 3.3(B)(2)(b)). Accordingly, the Council encourages any candidate for the BOE who has Relative(s) employed by the Wilton Schools to disclose to voters the constraints that potential Conflicts of Interest will place upon their service should they be elected and become a BOE member.

Sources:

Town of Wilton, Code of Ethics: <https://www.wiltonct.org/home/links/code-ethics>
Wilton Board of Education, Series 9000, Bylaw: Role of Board Members,
<https://go.boarddocs.com/ct/wilton/Board.nsf/vpublic?open#>

Submitted on behalf of the Wilton Council on Ethics



Chair: Thanh Tsoi

Members:

Rhonda Brown

Tamara Conway

Elizabeth A. Edwards