



VILLAGE OF OAK PARK
LAW DEPARTMENT

MEMORANDUM

To: Honorable Mayor Anan Abu-Taleb and Board of Trustees
cc: Cara Pavlicek, Village Manager
From: Paul L. Stephanides, Village Attorney *Paul L. Stephanides*
Date: July 31, 2017
Re: Conflict of Interest - Village Board Members serving on the Oak Park Economic Development Corporation Board of Directors

INTRODUCTION

This memorandum addresses the question of whether it is a conflict of interest for Village Board members to serve on the Oak Park Economic Development Corporation's ("OPEDC") Board of Directors. As set forth below, it is not a conflict of interest pursuant to the applicable state statutes and provisions of the Oak Park Village Code ("Village Code").

BACKGROUND

The OPEDC is an Illinois not-for-profit corporation that is tax exempt pursuant to Section 501(c)(4) of the Internal Revenue Code, 26 U.S.C. § 501(c)(4). The OPEDC By-Laws provide that it was created to "enhance the quality of life and the economic health of the Village through the expansion of the Village's property tax base, expansion of the Village's sales tax revenue and the creation and retention of jobs in the Village." Second Amended & Restated By-Laws of the Oak Park Economic Development Corporation at Section 2.

The Village recently entered into a Second Amended and Restated Operating Agreement with the OPEDC dated July 17, 2017 ("Second Amended Agreement"). As with past agreements with the OPEDC, the Second Amended Agreement requires the Village Board to give its prior approval to the OPEDC's By-Laws and any amendments. Second Amended Agreement at Section 5.2.

The OPEDC's current By-Laws are the "Second Amended & Restated By-Laws," which were approved by the Village Board on December 7, 2015. Pursuant to the By-Laws, the Village President, one Village Trustee and the Village Manager serve on the Board of Directors of the OPEDC as voting "Governmental Directors." Second Amended & Restated By-Laws at Section 3(a)-(c). The Village Trustee member is appointed by the Village President subject to the advice and consent of the Village Board. Second Amended & Restated By-Laws at Section 3(b).

The Second Amended Agreement provides that the OPEDC will “review requests for economic development incentives and make recommendations to the Village.” Second Amended Agreement at Exhibit A. It is this language which requires the Governmental Directors to vote on such requests that are then voted on by the full Village Board that has given rise to the question of whether there is a conflict of interest for Village officials to be members of the OPEDC’s Board of Directors as Governmental Directors.

DISCUSSION

I. A VILLAGE OFFICIAL DOES NOT HAVE A STATUTORY CONFLICT OF INTEREST IF AN OFFICIAL IS A MEMBER OF THE BOARD OF DIRECTORS OF THE OPEDC.

The applicable state statutes governing conflicts of interests for Village Board members provide that there is a conflict if the member has a financial “interest,” that is being served by a member’s vote on a particular matter, i.e., a personal benefit. 65 ILCS 5/3.1-55-10(a); 50 ILCS 105/3(a). These statutes serve to prevent public officials from making decisions that may advance or injure their individual interests.

The first cited statute, Section 3.1-55-10(a) of the Illinois Municipal Code, provides:

A municipal officer shall not be financially interested directly in the officer’s own name or indirectly in the name of any other person, association, trust, or corporation in any contract, work, or business of the municipality, or in the sale of any article whenever the expense, price, or consideration of the contract, work, business, or sale is paid either from the treasury or by an assessment levied by statute or ordinance.

65 ILCS 5/3.1-55-10(a).

The second cited statute, Section 3(a) of the Public Officer Prohibited Activities Act, provides:

No person holding any office, either by election or appointment under the laws or Constitution of this State, may be in any manner financially interested directly in his own name or indirectly in the name of any other person, association, trust, or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. No such officer may represent, either as agent or otherwise, any person, association, trust, or corporation, with respect to any application or bid for any contract or work in regard to which such officer may be called upon to vote. Nor may any such officer take or receive, or offer to take or receive, either directly or indirectly, any money or other thing of value as a gift or bribe or means of influencing his vote or action in his official character.

50 ILCS 105/3(a). The phrase “financially interested” is not defined in either statute. The definition can be gleaned from the placement of this phrase and its usage in both statutes and from case law.

These two statutes were both construed by the Illinois Supreme Court in the case of *People of the State of Illinois v. Scharlau*, 141 Ill.2d 180, 152 Ill.Dec. 401, 565 N.E.2d 1319 (1990). In *Scharlau*, the defendants were elected commissioners of a city and were prosecuted after they had settled a federal lawsuit brought pursuant to the Voting Rights Act of 1965, 42 U.S.C. § 1973b. The terms of the settlement changed the city’s form of government from a mayor-commissioner system to a mayor-alderman system. The settlement guaranteed that the defendants would continue in office as the administrators of various departments which corresponded to their commission duties for a period of three years.

The Court held that the settlement was “an independent contractual agreement” which invoked the prohibitions contained in the statutes. The Court stated:

The defendants had a duty to act in the best interest of the city. They also had a duty to refrain from using their positions as city commissioners for personal benefit. We agree that defendants’ settling the lawsuit was within their lawful authority. We find, however, that defendants’ arranging from their own employment for a fixed term and salary was outside that authority.

Id., 141 Ill.2d at 196, 152 Ill.Dec. at 408-09, 565 N.E.2d at 1326-27.

Village officials’ membership on the OPEDC’s Board of Directors does not invoke these statutory prohibitions, unlike as the Court found in the *Scharlau* case. A vote on a matter before the OPEDC, such as whether to recommend to the entire Village Board that the Village should award a financial incentive to a developer, and then voting on the incentive as a Village Board member, is not one that advances a Village official’s personal financial interest. This would not be the case if the Village official had a personal financial stake in the developer’s organization which would implicate the Court’s holding in the *Scharlau* case. It is not implicated however merely because a Village official is also a member of the OPEDC’s Board of Directors.

As a not-for-profit organization that exists to promote economic development in the Village, OPEDC does not have its own financial stake in any particular development, either by ownership of the land upon which a proposed development might occur or an ownership stake in a developer’s organization. This is simply not its mission or why it was organized in the first place. Pursuant to its contractual role in relation to the Village Board, the OPEDC only recommends to the Village Board whether economic development incentives should be awarded.

Furthermore, both of the state statutes cited above from the Illinois Municipal Code and the Public Officer Prohibited Activities Act contain narrow exceptions under which officials may have an interest in a contract entered into by the municipality which they serve if the exceptions are

strictly followed. One of these exceptions allows a Village Board member to hold a position on the board of a not-for-profit corporation such as the OPEDC and is summarized as follows:

Under either of the following circumstances, a municipal officer may hold a position on the board of a not-for-profit corporation that is interested in a contract, work or business of the municipality:

(1) If the municipal officer is appointed by the governing body of the municipality to represent the interests of the municipality on a not-for-profit corporation's board, the municipal officer may actively vote on matters involving either that board or the municipality, at any time, so long as the membership on the not-for-profit board is not a paid position, except that the official may be reimbursed for expenses incurred as the result of membership on the not-for-profit board; or

(2) If the municipal officer is not appointed to the governing body of a not-for-profit corporation by the governing body of the municipality, then the municipal officer may continue to serve; however, the municipal officer shall abstain from voting on any proposition before the municipal governing body directly involving the not-for-profit corporation and, for those matters, shall not be counted as present for the purposes of a quorum of the municipal governing body.

65 ILCS 5/3.1-55-10(g); 50 ILCS 105/3; 50 ILCS 105/3.2(f). Although no interest in a contract, work or business of the Village is implicated by a Village official's service on the OPEDC Board as explained above, this exception further allows a Village official to serve on the OPEDC Board.

The Village officials that served on the OPEDC Board are appointed by virtue of the Second Amended Agreement between the Village and the OPEDC and the OPEDC's By-Laws. The Village officials on the OPEDC board are not paid for their service on the OPEDC Board pursuant to the By-Laws. Thus, the above statutory exemption allowing a municipal officer to serve on a not-for-profit corporation's board is applicable and the Village Board members who serve on the OPEDC Board may vote on matters involving either the OPEDC or the Village.

II. The Village Code Does Not Prohibit a Village Official from Serving on the OPEDC Board.

The Oak Park Village Code ("Village Code") contains similar provisions to the state statutes cited above with regard to a vote by a Village official on a particular matter when the official has a financial interest in the matter. Section 2-25-9 of the Village Code provides in pertinent part:

2-25-9: CONFLICTS OF INTEREST AND STANDARDS OF CONDUCT:

A. Impartiality: Every elected and appointed officer and employee shall perform his or her duties with impartiality and without prejudice or bias for the

benefit of all citizens of the Village. No officer or employee shall grant or make available to any citizen, including other officers or employees of the Village, any consideration, treatment, advantage or favor beyond that which is available to every other citizen.

B. Prohibition Against Interests in Village Contracts and Business:

1. No elected officer of the Village, whether paid or unpaid, shall have any interest directly or indirectly in any contract, work or business of the Village, except as permitted by 65 Illinois Compiled Statutes 5/3-14-4 of the Illinois Municipal Code.

2. No employee of the Village shall have any interest directly or indirectly in any contract, work or business of the Village, except that any employee who is otherwise eligible under applicable Federal, State and/or local laws and program guidelines may participate in the Village's rehabilitation and diversity programs, including but not limited to the multiple-family and single-family residential rehabilitation programs, the Diversity Assurance Program, the Retail Rehabilitation Grant Program and the First Time Home Buyer Mortgage Assistance Program.

3. Any financial or other personal interest, direct or indirect, which tend to affect the independence of judgment of said officer or employee shall be publicly disclosed.

C. Prohibition Against Interests Which Are Incompatible With Official Duties: No elected or appointed officer or employee shall engage in any business or transaction or shall have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his official duties in the public interest or which may tend to impair his independence of judgment or action in the performance of his official duties. For purposes of this Section, personal interest shall include the financial interest of the spouse or minor children of the elected or appointed officer or employee.

D. Interest in Contract, Legislative or Administrative Action, Transaction, Zoning Decision, Permit or Licensing Decision, or Other Matter: No elected or appointed officer or employee having the power or duty to perform an official act or action, related to a contract, legislative or administrative action, transaction, zoning decision, permit or licensing decision, or other matter which is, may be or has been the subject of an official act or action of the Village during the prior twelve (12) months shall:

1. Have or thereafter acquire an interest in such contract, legislative or administrative action, transaction, zoning decision, permit or licensing decision, or other matter, except as otherwise stated in this Section; or
2. Have an interest in any business entity representing, advising or appearing on behalf of, whether paid or unpaid, any person involved in such contract, legislative or administrative action, transaction, zoning decision, permit or licensing decision, or other matter, except as otherwise stated in this Section.
3. Have solicited or accepted present or future employment with a person or business entity involved in such contract, legislative or administrative action, transaction, zoning decision, permit or licensing decision, or other matter for a period of twelve (12) months following the Village's action on such matter.

* * * *

Oak Park Village Code, Sec. 2-25-9(A)-(D)(3). Similar to the state statutes cited above, Section 2-25-9 of the Village Code does not contain a definition of the operative term “interest” or phrase “financial or other personal interest.”

Section 2-25-9 of the Village Code is based upon the same language set forth in the state statutes cited above and is intended to expand on the prohibitions in those statutes. As with those statutes, however, it does not contain any language which would prohibit a Village official from service on the OPEDC Board or language that implicates a conflict of interest from particular votes. Thus, the state statutes and case law construing the statutes govern the question and they provide that there is no conflict of interest. They further provide an exception that explicitly allows Village officials to serve on the OPEDC Board.

CONCLUSION

Those Village officials who currently serve on the OPEDC Board of Directors do not have a conflict of interest and they may continue to do so as explained above. Please let me know if you have any questions.