

Town records



BOARD OF ETHICS
City of Middletown

TELEPHONE 344-3400

DEKOVEN DRIVE, MIDDLETOWN, CONNECTICUT 06457-1300

June 26, 1989

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In Re: Request for Advisory Opinion from Joseph E. Milardo, Jr., member of Redevelopment Agency, dated February 24, 1989

I. FACTUAL BACKGROUND:

A. Loffredo Complaint.

On October 6, 1989, Vincent J. Loffredo filed a complaint with this Board against Joseph E. Milardo, Jr. The complaint claimed that Mr. Milardo on August 29, 1988 and September 19, 1988 had violated Sections 30-7 and 30-9 of the City of Middletown's Code of Ethics. (the Code) The violations allegedly occurred when Mr. Milardo voted as a member of the Redevelopment Agency on matters that concerned the Middlesex Mutual Assurance Company (MMA) which Mr. Milardo's lawfirm had represented. On November 23, 1988, Mr. Milardo filed with the Board a lengthy rebuttal of the Loffredo complaint.

Unfortunately, the Board was never able to consider the Loffredo complaint on its merits. At the time the Board had no alternates and only four active members, two of whom disqualified themselves because of either business or personal relationships with Mr. Milardo. The Board interpreted Code subsections 30-13(b) and (c) as requiring the concurrence of three members to determine whether a complaint states a violation, which is the step preliminary to holding a contested hearing on whether a violation in fact occurred.

Code Section 30-13(b) also requires that the Board begin any hearing on a complaint within ninety days after the complaint is



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filed. Ninety days after Mr. Loffredo filed his complaint, the Board had still not begun hearing on it because the Board did not have enough voting members available even to determine preliminarily whether the complaint stated a violation of the Code. Mr. Milardo on January 9, 1989 requested that the Board dismiss the complaint because the ninety day period for beginning a hearing had passed. The Board referred the request to the City Attorney's office for a legal opinion. Assistant City Attorney Timothy Lynch on February 16, 1989 advised the Board that the ninety day period to begin hearing on a complaint was mandatory. Because the Board for whatever reason had not begun hearing on the complaint within the ninety day period, the complaint had to be dismissed. On March 20, 1989, the Board dismissed the Loffredo complaint without prejudice in light of Attorney Lynch's opinion.

B. Milardo Request for Advisory Opinion.

On February 24, 1989 Mr. Milardo requested an advisory opinion. A copy of Mr. Milardo's request is attached as Schedule A. At a special meeting on April 24, 1989, Mr. Milardo appeared before the Board and provided supplementary information about his request. He stated that the Board's answer to the questions might determine whether he could continue to serve on the Redevelopment Agency when much of the Agency's immediate business concerns plans by MMA to develop the area west of Main Street, east of Broad Street, south of Court Street and north of College Street (the College-Court block). Redevelopment of the College-Court block affects not only MMA but also the Connecticut Bank & Trust Company and Farmers & Mechanics Savings Bank, which have offices in the block.

After discussing Mr. Milardo's request with him, the Board



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voted unanimously that the conduct described in each of the three questions would not violate the Code of Ethics under the facts presented. The Board's specific opinion on each question follows.

II. RESPONSES TO QUESTIONS IN MILARDO REQUEST FOR ADVISORY OPINION.

A. Relevant Portions of the Code of Ethics.

Section 30-2(c) defines financial interest as "...any interest which will result in a monetary or other material benefit to an official or employee, either directly or indirectly (which has a value of more than \$50 to the official or employee), other than his duly authorized salary or compensation for his services to the City, and which is not common to the interest of all other citizens of the City."

Section 30-2(f) defines personal interest as "...any interest in the matter which would affect the action of the official or employee other than a financial interest..."

Section 30-2(g) defines transaction as "...the offer of, or the sale, purchase or furnishing of any real or personal property, or services, by or to any person or entity directly or indirectly, as vendor or vendee, prime contractor, subcontractor or otherwise, for the use and benefit of the City or of such other person or entity, for a valuable consideration."

Section 30-7(b) states: "No official or employee shall have a financial or personal interest, directly or indirectly, in any transaction with any City agency as to which he has the power to take or influence official action. A contract in violation of



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this section may be declared void at the option of the Common Council.

Section 30-7(c) states: "If an official or employee has any direct or indirect financial or personal interest in the outcome of any matter coming before the agency of which he is a member or by which he is employed, such official or employee shall disclose on the record of the agency or to his superior or other appropriate authority the existence of such financial or personal interest. An official or employee having such a financial interest shall not engage in deliberations concerning the matter, shall disqualify himself from acting on the matter and shall not communicate about such matter with any person who will participate in the action to be taken on such matter. Unless any such personal interest is sufficiently remote from the matter, such official or employee shall not engage in deliberations concerning the matter, shall disqualify himself from acting on the matter and shall not communicate about such matter with any person who will participate in the action to be taken on such matter".

Section 30-9 states: "No official or employee shall accept, from any one source during any period of one (1) year, any thing or things exceeding Fifty (\$50) Dollars in total value as a gift, gratuity or favor, whether in the form of a service, loan, thing or promise, from any person who or entity which to his knowledge is interested directly or indirectly, in any manner whatsoever, in a transaction with any City agency as to which he has the power to take or influence official action."



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B. Response to Question #1:

Mr. Milardo's first question states:

Upon disclosure of past relationship, is it a Conflict of Interest for an individual to participate in discussion and vote involving an individual or business entity having matters before a Board or Agency that individual sits on if that individual's partner or law firm has represented the individual or entity in the past, but said individual or entity is currently represented by separate counsel in matters before the agency or Board? For purposes of this question you are to assume that the individual or entity has many attorneys representing he/she/it on many differing matters in many different forums simultaneously, thus the Partner or Law Firm is not its sole counsel.

For the vote on the MMA matters to be a conflict of interest under Section 30-7(b) Mr. Milardo would have to derive a financial or personal interest directly or indirectly from the outcome of the vote. The facts presented provided no basis for concluding that Mr. Milardo or his law firm would be likely to receive any monetary or other material benefit from the outcome of the Redevelopment Agency vote. A member of Mr. Milardo's law firm some time ago drew a lease for one of MMA's subsidiary companies so that it could rent commercial space in the Middlesex Plaza, not the College-Court block. Although the term of the lease has not expired, Mr. Milardo's law firm has provided no further services to the MMA subsidiary. Mr. Milardo's law firm does not represent MMA in the College-Court block development. Neither is the law firm on any retainer arrangement with MMA, nor did the services it may have provided MMA constitute a substantial part of its income. MMA employs many attorneys to handle different types of legal matters in different forums.

The Board concludes that the facts presented provide no basis



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for assuming that Mr. Milardo's law firm would be likely to derive future benefit from serving MMA's interest in connection with the developed College-Court block. No evidence suggests that MMA will be more likely to hire the Milardo law firm to provide it with services for the developed College-Court block than it will be to hire other Middletown law firms or law firms outside of the City.

Similarly, the Board does not find that Mr. Milardo had any personal interest in MMA's College-Court block development simply because his firm had once represented MMA. A personal interest by definition is one that will affect the official's action. The mere fact of previously representing an applicant in an unrelated matter -- particularly a large corporate applicant which retains numerous attorneys -- does not constitute a personal interest in the applicant's project.

Neither did the Board find any violation of Section 30-7(c) under the facts presented. Section 30-7(c) requires that the official disclose on the agency record any direct or indirect financial or personal interest he might have in the outcome of any matter before the agency. Mr. Milardo's request assumes that the official will disclose his lawfirm's past relationship with the applicant. Under the facts presented, Mr. Milardo has no financial interest and so does not need to disqualify himself from voting. If he has any personal interest, it is sufficiently remote from the matter before the agency so that he does not need to disqualify himself.

Section 30-9 would not apply under the facts presented because there is no evidence that Mr. Milardo has received or will receive any gift, gratuity or favor from MMA. The only evidence is that in the past Mr. Milardo's lawfirm performed



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services for MMA unrelated to the College-Court block development. For those services it received reasonable compensation, not a gift.

The Board further advises Mr. Milardo that he has an ongoing obligation to disclose on the agency record any further representation his office might provide MMA. Obviously, should his law firm begin to provide MMA representation for the College-Court block project, Mr. Milardo would have to disqualify himself from voting on any matters concerning MMA. If his lawfirm begins representing MMA in other matters, it would depend upon the nature of the representation whether Mr. Milardo has a financial or close enough personal interest to require that he disqualify himself from voting on the College-Court block or other redevelopment issues that might concern MMA. As a general rule, the Board advises city officials to avoid the appearance of impropriety. A city official should seriously consider disqualifying himself from voting on a matter when the public will be likely to perceive the vote as a violation of the Code of Ethics.

C. Question #2 of Mr. Milardo's request for advisory opinion states:

May an attorney who has represented a Bank's interest on behalf of Borrower Clients in ensuring that the Bank's interest is protected, thereafter participate as a Board or Agency member in discussion and vote involving matters involving that Bank? After disclosure?

The facts presented assume that the attorney represented the Bank's interest only derivatively, while serving a client who was obtaining a loan from the bank. Banks often request that a



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borrower's attorney complete loan documents, certify title or provide title insurance, issue opinion letters on the legal validity and enforceability of the borrower's obligation to repay the loan, or otherwise take actions that will protect the bank's interest. Under these facts, the attorney represented the borrower but as part of the loan transaction furthered the bank's interest.

The Board's opinion is that such representation does not violate Section 30-7(b) to (c). It does not give the attorney a financial interest in the bank's welfare. Neither does it give him a personal interest near enough to create a conflict of interest, provided the attorney disclose on the record the "representation" he has provided.

The fact pattern presented may be sharply distinguished from that of an attorney who represents a bank directly in loan transactions. Such an attorney would have a primary client relationship with the bank even if his fees are paid by the borrower as part of the loan transaction. Whether and under what circumstances such an attorney could vote upon redevelopment matters that concerned the bank he represented, is a question outside the scope of this opinion.

D. Question #3 of Mr. Milardo's request for advisory opinion states:

May an individual who has a personal or business account with a financial institution participate in discussion or vote as a Board or Agency member in matters in which the financial institution has an interest? After disclosure?

Not only Mr. Milardo's law firm but other agency members,



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including other attorneys who are members of the agency, have personal or business accounts with the banks affected by the College-Court block development. Under the facts presented, none of these individuals are directors, officers, stockholders or even incorporators of any of these financial institutions. Like numerous other individuals not on the Redevelopment Agency, it must be assumed they have no interest in the financial institutions other than the accounts they maintain and any benefit they derive from the financial institutions, nonmember depositors derive as well.

Under the facts presented the Board finds no violation of Code Sections 30-7(b), (c). There is no evidence the individuals will derive a financial benefit from the outcome of the vote. Neither is there evidence of any personal interest near enough to require disqualification of the agency member provided he fully discloses on the record his personal and business accounts with the financial institutions.

Under the facts presented, the agency members did not hold unusually large accounts with the financial institutions. Without necessarily requiring that an agency member disqualify himself, the fact that the member holds an unusually large account with the financial institution, or that his accounts with the institution provide a substantial part of his income, could at the very least give him a personal interest in that institution's well being that could affect his actions. The case of such an agency member would have to be judged on its own facts if it arises. Suffice it to say, it is not the case presented in Mr. Milardo's request for advisory opinion.



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The Board commends Mr. Milardo for not resting on the technical dismissal of the Loffredo complaint but proceeding on his own initiative to seek this this advisory opinion.

Respectfully Submitted on
behalf of Kenneth H. Antin,
John W. Paton, Ernest Garofoli,
George M. Souto and Michael J.
Wrang.

KENNETH H. ANTIN
Chairman
Board of Ethics

SCHEDULE A
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*ALSO ADMITTED IN NEW YORK

February 24, 1989

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Kenneth Antin, Esq.
Chairman, Ethics Commission
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Re: Request for Advisory Opinion

Dear Atty. Antin:

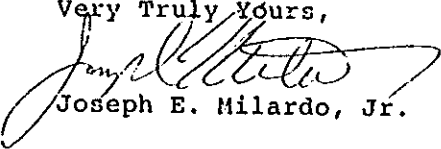
I am in receipt of a copy of the opinion of Atty. Lynch that the Loffreddo charge of Conflict of Interest against me should be dismissed. Now that his complaint of October 5, 1988 is resolved, I would like to seek the Advisory opinion I was estopped from requesting due to the pendency of that complaint.

Pursuant to Middletown Ordinance sec. 30-13(a) this is to request advisement in the following issues, using as background information all materials presently in the Loffreddo Complaint file:

1. Upon disclosure of past relationship, is it a Conflict of Interest for an individual to participate in discussion and vote involving an individual or business entity having matters before a Board or Agency that individual sits on if that individual's partner or law firm has represented the individual or entity in the past, but said individual or entity is currently represented by separate counsel in matters before the agency or Board? For purposes of this question you are to assume that the individual or entity has many attorneys representing he/she/it on many differing matters in many different forums simultaneously, thus the Partner or Law Firm is not its sole counsel.
2. May an attorney who has represented a Bank's interest on behalf of Borrower Clients in ensuring that the Bank's interest is protected, thereafter participate as a Board or Agency member in discussion and vote involving matters involving that Bank? After disclosure?
3. May an individual who has a personal or business account with a financial institution participate in discussion or vote as a Board or Agency member in matters in which the financial institution has an interest? After disclosure?

Because I have voluntarily refrained from any participation in Redevelopment matters during the pendency of the Loffreddo complaint, I would request your expedient consideration and determination of the issues presented in this request for advisory opinion.

Very Truly Yours,


Joseph E. Milardo, Jr.