

Opinion of the City of Rochester Board of Ethics
Opinion Number 2019-2
March 12, 2019
C18-3

Overview

On April 10, 2018, Mr. Lawrence Champoux submitted a complaint regarding the Chair of the City's Zoning Board of Appeals (ZBA) Mimi Freund Tilton and her participation in voting on a zoning variance application submitted by Mr. and Mrs. Jon Gabel in the Highland Heights neighborhood. The complaint alleged that Ms. Tilton 1) failed to disclose her husband's relationship with the Gabels and 2) had a conflict of interest in the matter.

Applicable Code of Ethics Provisions

Section of the Code of Ethics alleged to have been violated:

3. No City officer or employee shall discuss, vote on, decide or take part in, formally or informally, any matter proposed or pending before any agency or other City officer or employee in which he has an interest. This provision shall not apply to any City officer or employee whose interest in the proposed or pending matter is minimal, provided that these procedures are followed strictly:

(a) The City officer or employee shall identify his interest, that is, the benefit for advantage that would be gained or lost if the City acts on the matter in various ways, and the underlying basis of it, such as ownership, an investment, a contract or claim, employment, or a relationship, if any.

(b) The City officer or employee shall completely and specifically describe and disclose his interest and its underlying basis, if any, in writing to his immediate superior and the chairperson of the Board of Ethics, in advance of his participation in the matter.

(c) If either the City officer or employee, or his immediate superior, or the chairperson of the Board of Ethics thinks that the disclosure reasonably raises a question whether the interest is minimal, the question shall be submitted to the Board of Ethics for an opinion, prior to which the officer or employee shall not participate in the matter. Failure to disclose properly, or abide by the opinion of the Board of Ethics, shall make any participation of the officer or employee in the matter null and void.

AN INTEREST – A benefit or advantage of an economic or tangible nature that a person or a member of his or her family would gain or lose as result of any decision or action, or omission to decide or act, on the part of the City government or any of its agencies, officers, and employees.

Opinion

After review of the information provided by the complainant, 5 of the 6 members of this board joining this opinion find that Ms. Tilton 's husband does not have an "interest" in the variance application as "interest" is currently defined in the Code of Ethics. Under the Code of Ethics, an "interest" must be "a benefit or advantage of an economic or tangible nature". Previous business relationships with the Gabels do not rise to the level of the specific economic or tangible benefit or advantage required by the Code for preclusion from involvement in a matter. Ms. Tilton could therefore participate in the variance review and approval process and no violation of the Code of Ethics occurred.

On the issue of the non-disclosure by Ms. Tilton of her husband's past involvement with the Gabels, this Board does find public disclosure of that fact would have been a better course of action. The Board has in the past stated on a number of occasions, and once again now, reinforces the importance of disclosure of possible conflicts of interest, and potential voluntary recusal from participation in a matter, to avoid the perception of relevant information being withheld or the appearance of a conflict of interest being present. Had that occurred in the instant situation, this ethical complaint may well have been avoided.

(Weir, Hodgins, Lee, Scott, Steinbrenner)

DISSENTING OPINION

Upon review of the entire complaint filed regarding Mary Freund Tilton, I have found that there has been a violation of the code of ethics of the City of Rochester in two areas:

- 1) Mary Tilton had an interest in the matter before the Zoning Board of Appeals (ZBA)
- 2) Mary Tilton did not disclose that interest to the Chairperson of the Board of Ethics for a decision regarding whether or not she could participate in the matter before the ZBA

I find that given the length of relationship, both personal, and financial, Mary Tilton should have done the following:

- 1) Immediately disclosed the relationship both she, and her husband, Sam Tilton had with those who had a matter before the ZBA to the Chairperson of the Board of Ethics
and:
- 2) Recused herself from the matter until either the Chairperson of the Board of Ethics, or the Board of Ethics made a decision as to whether or not there was an interest in the matter before the ZBA.

Mary Tilton did not address the matter of interest (as defined by the Code of Ethics) with the Chairperson of the Board of Ethics- which has the authority to decide if there is an interest.

The majority of the Board of Ethics has found there was no interest- but this is after the fact. Evidence presented by the complainants, shows a long-term personal, legal, and financial relationship. I find that there was an interest, and because there was an interest, Mary Tilton's participation in the matter before the ZBA should be null and void, per the Code of Ethics.

We have a responsibility, as appointed, or elected public officers, or employees of the City of Rochester, to hold ourselves to a higher, ethical standard. Disclosure, and if necessary, review by the Chairperson of the Board of Ethics, or an opinion by the Board of Ethics, are necessary steps to ensuring we have a more transparent, and ethical government.

(Ginett)