

Chapter 26

ETHICS, CODE OF

[HISTORY: Adopted 5-26-1998 by the Board of Selectmen of the Town of Somers, effective 6-22-1998.¹ Amendments noted where applicable.]

ARTICLE I General Provisions

~ 26-1. Policy and purpose; statutory authority; repealer.

A. The proper operation of the municipal government of the Town of Somers requires that all public officials, employees and independent contractors, whether elected, appointed or volunteers, paid or unpaid, shall be impartial and responsive to the public interest; that public office or employment shall not be used for personal gain or advantage; and that the public confidence in the integrity of the municipal government be maintained. Public officials, employees and independent contractors shall not place themselves in positions where private interests substantially conflict with their public duty. The administration of legislative and quasi-judicial powers demand the highest public confidence. Anything which tends to significantly weaken the public confidence and/or to undermine the security of individual rights is against public policy.

B. The purpose of this code is to set forth standards of ethical conduct; to develop and maintain a tradition of responsible and effective public service; and to provide for actions to be taken in the event of the violation of this code.

C. In recognition of these principals and pursuant to Sections 7-148(c)(10)(B) and 7-148(h) of the Connecticut General Statutes, there is hereby established for the Town of Somers the following Code of Ethics.

D. All ordinances and parts of ordinances in conflict with this chapter are hereby repealed.

~ 26-2. Definitions.

As used in this Code the following words shall have the following meanings:

AGENCY -- All departments, boards, commissions and committees of the Town of Somers.

BUSINESS ASSOCIATE -- Any sole proprietorship, partnership, firm, corporation, trust or other entity through

¹Editor's Note: This ordinance also superseded former Ch. 26, Ethics, Code of, adopted 9-30-1991, effective 10-21-1991.

which business for profit or not for profit is conducted in which the public official, employee or independent contractor is a director, officer, owner, partner, limited or general partner, beneficiary of a trust or holder of stock constituting 5% or more of the total outstanding stock of any class, provided that a public official, employee or independent contractor shall not be held associated with a not-for-profit entity solely by virtue of the fact such an individual or close relative is an unpaid director or officer of the not-for-profit entity.

CLOSE RELATIVE -- An individual's parent, spouse, fiancée, sibling, child or dependent relative.

COMMISSION -- The Town of Somers Ethics Commission.

CONFLICT OF INTEREST -- When a public official, employee or independent contractor takes or participates in any action in such individual's official capacity which involves either a situation wherein such individual has a financial interest or when the situation involves an individual's employer, close relative or business associate, as defined in this code, which is in substantial conflict with the proper discharge of his or her duties or employment in the public interest. An individual does not have an interest which is in substantial conflict with the proper discharge of his or her duties or employment in the public interest if any benefit or detriment which accrues to him or her or his or her close relative or business associate is of no greater extent than is routinely available to the public generally.

EMPLOYEE -- Any person receiving a salary, stipend or wages from the Town of Somers for services rendered, whether full- or part-time, at the time an alleged act occurred.

FINANCIAL INTEREST -- Any interest in the outcome of the exercise of an individual's official capacity from which that person expects to or does derive economic gain in excess of the economic gain which is expected to be or is derived by members of the public generally. Such person shall further be deemed to have a financial interest if any close relative or business associate of such person, or if any business entity in which such person holds an interest of 5% or greater, is the beneficiary of economic gain in excess of that derived by the public generally.

GIFT -- A payment, subscription, advance, forbearance, rendering of service, deposit of money or anything of value unless consideration of equal or greater value is transferred in its place. "Gift" shall not include a political contribution otherwise reported as required by law; services provided to support a political candidate or political party without compensation by persons volunteering their time; a commercially reasonable loan made on terms not more favorable than loans made in the ordinary course of business; anything of value received because of a family or other close personal relationship with the donor; food or beverage or both consumed on a single occasion, the cost of which is less than \$50 per person, with an aggregate per recipient of less than \$150 in any calendar year; nonpecuniary gift(s) with an aggregate value of less than \$100 per calendar year; a certificate, plaque or other ceremonial award costing less than \$100 or an award publicly presented in

recognition of public service or any other gift which would have been offered or given the individual if he or she were not a public official or employee.

GOOD FAITH -- Honesty in fact in the conduct or actions of the parties concerned.

INDEPENDENT CONTRACTOR -- Any person or business entity performing work or providing services, on a per diem or contractual basis, at the time an alleged act occurred.

KNOWINGLY, KNOWN or KNOWS -- Denotes actual knowledge of the fact in question. A person's knowledge may be reasonably inferred from circumstances. Knowledge or notification received by the Town of Somers or its various departments, boards, commissions and committees (hereafter represented as "town") will be deemed to represent actual knowledge of a person when it is brought to the attention of the individual or from when it would have been brought to his or her attention if the town had exercised due diligence. The town exercises due diligence if it maintains reasonable routines for the communication of significant information to individuals affected by such information and there is reasonable compliance with the routines.

PUBLIC OFFICIAL -- Any person holding elected or appointed office in the government of the Town of Somers at the time an alleged act occurred, except Justices of the Peace.

~ 26-3. Ethical standards of conduct.

A. The requirements herein set forth shall constitute reasonable standards and guidelines for the ethical conduct of public officials, employees and independent contractors. Such ethical conduct may separately involve the effect of a particular action and the intent of the parties involved with the Commission investigating and reporting on both. The following list of certain activities does not eliminate unethical activities not listed in this section. Allegations of unethical conduct, corrupting influence or illegal activities levied against any public official, employee or independent contractor, except as herein mentioned, will be investigated by the Commission. All public officials, employees and independent contractors, not limited to accountants, attorneys, engineers and school teachers, shall also be required to conform to the canons or code of ethics of their own profession.

B. All public officials, employees and independent contractors shall not:

(1) Decide or participate in a decision or hearing in which they have a conflict of interest.

(2) Solicit, grant or accept any special consideration, treatment, favor or advantage beyond that which is available to the public generally.

(3) Solicit any gift or accept any gift, personally or through a close relative or business associate, having a value of \$50 or more in any calendar year from a person, or one acting on

behalf of a person, who is known to be interested, directly or indirectly, in business dealings or in any matter whatsoever with the town.

(4) Promise favored treatment as a reward for any political activity.

(5) Act or vote in any official capacity upon a promise of any future reward.

(6) Disclose confidential information concerning the property, government or affairs of the town, except upon receipt of proper legal authorization or as required under the State of Connecticut Freedom of Information Act, Connecticut General Statutes, Section 1-15 et seq.

(7) Use information acquired in the course of their employment, and not generally available to the public, to advance their financial or other private interest, including the interests of friends, close relatives and business associates.

(8) Use or permit the use of town-owned vehicles, equipment, materials or property for personal convenience or profit, except when such services are available to the public generally or are provided as municipal policy for the use of such official or employee in the conduct of official business.

(9) Solicit business for private concerns during times when they are being paid to perform their public responsibilities.

(10) Discriminate against any public official, employee or independent contractor for the filing of a complaint alleging a violation of the Code of Ethics.

(11) Attempt to improperly influence any other public official, employee or independent contractor in the course of one's official duties.

(12) Appear for or represent any private interest, other than one's own, in any matters pending before an agency of the town when one is a member or alternate member of said agency.

(13) Fail to reveal any personal financial interest or knowingly fail to reveal the financial interest of a close relative or business associate, direct or indirect, in any matter coming before the Board of Selectmen or any other agency of the town. If such official, employee or independent contractor is a member of such body, he or she shall refrain from voting upon or otherwise participating in the consideration of such a matter or any determination in connection therewith by such body.

(14) Represent any private interest or any public interest except that of the town in any litigation against the town, or in any litigation in which the town is a party, if said litigation is in any way connected with any matter which is before any town agency upon which he or she is serving or is in any way incompatible with the proper discharge of his or her official duties.

(15) Knowingly provide or promote false or misleading testimony, statements, information or evidence relevant to any matter under investigation or pending before any agency of the town.

(16) Willfully and knowingly obstructing an investigation by not disclosing relevant information to parties authorized to receive such information in a timely fashion.

C. This subsection shall apply only to members and alternate members of the Town of Somers Ethics Commission. Our legal system is based on the principle that an independent, fair and competent person will interpret and apply the laws that govern us. A member or alternate member of the Town of Somers Ethics Commission (hereafter "member") is an arbiter of facts and law for the resolution of disputes and is a highly visible symbol of the government under the rule of law. Intrinsic to all sections of the Code of Ethics are precepts that members, individually and collectively, must respect and honor their office as a public trust and strive to enhance and maintain public confidence in the Commission and its findings. The text of this subsection is intended to provide guidance for the conduct of Commission members. It is not intended, however, that every transgression of this subsection will result in disciplinary action. Whether disciplinary action is appropriate should be determined by the Commission through a reasonable application of the text and should depend on such factors as the seriousness of the transgression. Should the members of the Commission find that probable cause exists of a violation of the Code by a member which warrants the removal of a member, the other members of the Commission shall forward a request to the Somers Board of Selectmen to proceed in accordance with Chapter V, Section 5-23, of the Charter for the Town of Somers. The requirements herein set forth constitute reasonable standards and guidelines of ethical conduct for members of the Commission:

(1) A member shall uphold the integrity and independence of the Commission.

(2) A member should avoid impropriety and the appearance of impropriety in all proceedings, pending or impending, before the Commission.

(3) A member shall not allow family, social, political or other relationships to influence the member's conduct or judgment.

(4) A member should be patient, dignified and courteous to respondents, complainants, witnesses, lawyers and others with whom the member deals in an official capacity and should expect like behavior from those dealing with the member in his or her official capacity.

(5) A member shall perform official duties without bias or prejudice. A member shall not, in the performance of official duties, by words or conduct, manifest bias or prejudice.

(6) A member shall not, while a proceeding is pending or impending, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any

nonpublic comment that might substantially interfere with a fair hearing. A member may make public comment about rules and procedures of the Commission in regard to pending proceedings.

(7) A member shall not disclose or use for any purpose unrelated to official duties nonpublic information acquired in a member's official capacity.

(8) A member shall disqualify himself or herself in any proceeding in which the member's impartiality might reasonably be questioned, including, but not limited to, instances where:

(a) The member has a personal bias or prejudice concerning a party or a party's representative or personal knowledge of disputed evidentiary facts concerning a proceeding.

(b) The member knows that he or she, individually, as a fiduciary, a close relative or a business associate has a financial interest in the matter in controversy that is more than de minimus.

~ 26-4. Citizenship.

It is affirmed that all public officials, employees and independent contractors are encouraged to exercise their rights as citizens. Individuals are entitled to vote, entertain their personal views on political questions and engage in political activity. Members of the Commission, however, should avoid public statements which may give rise to a suspicion of political bias or impropriety.

ARTICLE II Ethics Commission

~ 26-5. Establishment; membership; appointment; alternate members; qualifications; attendance at meetings.

A. In accordance with the provisions of the Connecticut General Statutes, Section 7-148h, there is hereby created an Ethics Commission. This Commission is empowered to investigate allegations of unethical conduct, corrupting influence, illegal activities or other behavior levied against any public official, employee or independent contractor that would reflect adversely against the Town of Somers.

B. The Commission shall be comprised of five resident electors, none of whom shall serve the town in any other capacity, either as an elected or appointed member of a Commission or Board nor as an employee of the town or the Somers Board of Education. All members shall be appointed by majority vote of the Board of Selectmen. Two alternate members may also be appointed. Of the five members initially appointed, three shall be appointed for terms of two years and two for terms of one year. All subsequent appointments to the Commission shall be for terms of two years.

C. Any regular member having served three consecutive two-year terms shall be ineligible for reappointment to the Commission for a period of two years. For an individual filling a vacancy, consecutive year of service shall commence with the beginning of the next appointed term. The two alternate members should fully participate in all hearings and discussions, but may not vote unless a regular member steps aside or is not present at the time of the vote. No more than five members shall ever vote on any decision of the Commission. To be eligible to vote a member must have been in attendance at all meetings at which relevant testimony was presented.

D. An individual will not be disqualified from serving on the Commission if he has a member of his or her immediate family employed by the town or Board of Education; however, if any accused person is an immediate family member or that family member's supervisor or employed in the same department as that family member, the Commission member shall remove himself or herself from participating in the decision process and voting on the matter before the Commission. In addition, no Commission member, regular or alternate, shall:

(1) Hold or seek any public office or any office, paid or unpaid, in a political party or political committee or be a paid lobbyist or an employee of any organization or association organized primarily for the purpose of influencing legislation or the decisions of public agencies; or

(2) Have been so employed or engaged for a period of one year prior to appointment to the Commission.

E. Individual members are expected to attend and participate in scheduled meetings, regular and special, as well as executive sessions, subject to any and all limitations identified by law or within the Code. If unable to attend, a member is responsible to notify the Chair of the Commission of his or her inability to attend the meeting 24 hours prior to the scheduled meeting time. Failure to attend three consecutive meetings without giving such notice will constitute cause for the Commission to advise the member, in writing, of a need to attend meetings and that continued failure to attend will require the Commission to request the member's removal.

~ 26-6. Complaints; procedure; investigation and hearings; time limits.

A. Complaints alleging violation of the town's Code of Ethics may be submitted by any person or the Commission may act on its own complaint, in the following fashion:

(1) All complaints must be in writing.

(2) All complaints must be signed, under penalty of false statement, before a person legally authorized to attest to such signing. If a person makes a false statement in a complaint, the complainant shall be subject to fines of up to \$1,000 and up to one year imprisonment under the provisions of Connecticut General Statutes Section 53a-157;

(3) Complaints may be submitted to the Commission by:

(a) Being mailed in a sealed envelope to the:

Ethics Commission
Town of Somers
Main Street-Town Hall
Somers, CT 06071
c/o Town Clerk - Confidential

(b) Complaints may also be submitted by hand delivery of a sealed envelope, addressed as noted above, to the Town Clerk's Office.

(4) The Commission may also file a complaint on its own part after an evaluation of possible violations of the Code. Such complaint shall comply with the requirements set forth above.

(5) Upon receipt of such envelope the Town Clerk's Office shall notify the Chair of the Ethics Commission of such receipt via phone or other method to ensure notification.

B. Not later than three business days after receipt of or issuance of such complaint, the Commission shall provide notice of such receipt or issuance, in writing, and a copy of the complaint, by certified mail, to any respondent against whom such complaint is filed and shall provide notice of the receipt of such complaint to the complainant. If the Commission undertakes an evaluation of a possible violation of the Code prior to the filing of a complaint by the Commission, the subject of the evaluation shall be notified within five business days after a Commission member first contacts any third party concerning the matter. The first business day following receipt, issuance or third party contact shall be the start of any notice period prescribed for in this part.

C. The Commission shall meet at its earliest opportunity to evaluate any complaints alleging a violation of the Code. As part of this evaluation the Commission will confirm that: the Commission has jurisdiction over the subject matter; the Commission has jurisdiction over the person (respondent); and the complaint states a claim upon which relief can be granted. The Commission will conduct an investigation of the alleged violation of the Code, unless the evaluation discloses a lack of jurisdiction, subject matter or personnel, or a failure to state a claim. The Commission shall dismiss the complaint, it shall inform the respondent and complainant of its finding and provide a summary of its reasons for making that finding within three business days of such a finding, by certified mail.

D. In the conduct of its investigation of an alleged violation of the Code, the Commission shall have the power to hold hearings, administer oaths, examine witnesses, receive oral and documentary evidence, subpoena witnesses, in accordance with the provisions of Connecticut General Statutes, Section 4-166 et seq., to compel attendance before the Commission and to require the production for examination by the Commission of any books and papers which the Commission deems relevant in any matter under investigation or in question.

E. Preliminary investigation and hearing.

(1) The Commission shall conduct a preliminary investigation and hold a hearing, both conducted in closed session, unless waived by the respondent, to determine if probable cause exists that a violation of the Code could have occurred. At this hearing the Commission shall have the same powers as under Subsection D and shall:

(a) Make a record of all proceedings conducted pursuant to this subsection.

(b) Examine witnesses and receive oral and documentary evidence it deems relevant to the matter under investigation.

(2) The complainant will have the opportunity to appear before the Commission to present corroborating evidence and witnesses, who must testify under oath, in support of the allegations in the complaint.

(3) The respondent shall have the right to appear and be heard and to offer any evidence which may establish that no probable cause of a violation of this Code exists.

(4) The respondent and complainant shall have the right to be represented by legal counsel and to examine and cross-examine witnesses.

(5) No later than the 10 days prior to the commencement of any hearing conducted pursuant to this subsection, the Commission, complainant and respondent shall exchange lists of intended witnesses. Failure to give such notice will act as a waiver of the omitting parties' right to present testimony from a witness not on their witness list. The Commission may waive this requirement or reschedule a hearing for good cause shown.

(6) The Commission shall make no finding that there is probable cause to believe a violation of the Code could have occurred except upon the concurring vote of four of its members. If the Commission finds that no probable cause to believe a violation of the Code exists the complaint shall be dismissed.

(7) The Commission shall inform the complainant and respondent of its findings and provide a summary of its reasons for making that finding within three business days.

(8) If the Commission finds that probable cause exists, the entire record of its findings shall be made public, within five days, except that the Commission may postpone examination or release of such public records for a period not to exceed 14 days for the purpose of reaching a stipulation agreement pursuant to Connecticut General Statute, Section 4-177(c).

F. Hearings after determination of probable cause.

(1) If the preliminary investigation indicates that probable cause exists for the violation of the Code, the Commission shall initiate hearings to determine whether there has been a violation of the Code. At this hearing the Commission shall have the same powers as under Subsection D and shall:

(a) Hold all hearings pursuant to this subsection open to the public.

(b) Make a record of all proceedings conducted pursuant to this Subsection.

(c) Examine witnesses and receive oral and documentary evidence it deems relevant to the question before it.

(2) The complainant will have the opportunity to appear before the Commission first to present corroborating evidence and witnesses, who must testify under oath, in support of the allegations in the complaint.

(3) The respondent and complainant shall have the right to be represented by legal counsel and to examine and cross-examine witnesses.

(4) The respondent will have the opportunity to appear before the Commission to rebut any evidence or witnesses previously presented or to offer evidence and witnesses, who must testify under oath, with information which may tend to show the respondent did not violate the Code.

(5) No later than 10 days prior to the commencement of any hearing conducted pursuant to this subsection, the Commission, complainant and respondent shall exchange lists of intended witnesses. Failure to give such notice will act as a waiver of omitting parties' right to present testimony from a witness not on their witness list. The Commission may waive this requirement or reschedule the hearing for good cause shown.

(6) Both the complainant and respondent, or their legal counsel, shall be afforded the opportunity to summarize their respective positions at the conclusion of the presentation of any evidence or testimony the Commission deemed relevant. Such summations will be presented by the respondent first and followed by the complainant.

(7) The Commission shall find no person in violation of any provision of the Code except by unanimous vote of no fewer than four members.

(8) Not later than 15 days after the public hearing conducted in accordance with this subsection, the Commission shall publish its findings and a memorandum of the reasons therefor. Such finding and memorandum shall be deemed to be the final decision of the Commission on the matter for the purposes of Connecticut General Statutes, Chapter 54, Section 4-166 et seq.

(9) Any party aggrieved by the finding and memorandum may appeal therefrom to the superior court in accordance with the provisions of Connecticut General Statutes, Section 4-183.

G. No complaint may be made under this Code except within three years next after the violation alleged in the complaint has been committed.

H. No person shall take or threaten to take official action against an individual for such individual's disclosure of information to the Commission under the provisions of this chapter. After receipt of information from an individual under the provisions of this chapter, the Commission shall not disclose the identity of such individual without his or her consent, unless the Commission determines that such disclosure is unavoidable during the course of an investigation.

~ 26-7. Confidentiality of complaints and investigations; publication of findings.

A. Unless the Commission makes a finding of probable cause, a complaint alleging a violation of the Code shall be confidential, except upon the written request of the respondent. A Commission evaluation of a possible violation of the Code prior to the filing of a complaint by the Commission shall be confidential, except upon the request of the subject of the evaluation. If the evaluation is confidential, any information supplied to or received from the Commission shall not be disclosed to any third party by a subject of the evaluation, a person contacted for the purpose of obtaining information or by a member of the Commission. No provision of this subsection shall prevent the Commission from reporting the possible commission of a crime to the chief state's attorney or other prosecutorial authority.

B. An investigation conducted prior to the probable cause finding shall be confidential, except upon the written request of the respondent. If the investigation is confidential, the allegations in the complaint and any information supplied to or received from the Commission shall not be disclosed during the investigation to any third party by a complainant, respondent, witness, designated party or Commission member.

C. Not later than three business days after the termination of an investigation, the Commission shall inform the complainant and the respondent of its finding and provide them a summary of its reasons for making that finding. The Commission shall publish its finding upon receipt of the respondent's written request and may also publish a summary of its reasons for making such finding.

D. If the Commission makes a finding of no probable cause, the complaint and the record of its investigation shall remain confidential, except upon the written request of the respondent and except that some or all of the record may be used in subsequent proceedings if deemed relevant. No complainant, respondent, witness, designated party or Commission member shall disclose to any third party any information learned from the investigation, including knowledge of the existence of a complaint.

~ 26-8. Sanctions.

A. If the Commission finds that there is a violation of the Code, it may impose the following sanctions:

(1) Issue an order to return any and all gifts improperly received.

(2) Issue a statement of censure to be included in the personnel file of the respondent.

(3) Recommend that:

(a) A public official resign.

(b) An employee be terminated, demoted, transferred or suspended.

(c) An independent contractor be removed and legal action be initiated to terminate any contract for cause.

B. In addition to such sanctions against an offending party, the Commission may order the reconsideration of any decision or actions involved in a violation of the Code.

C. If the Commission has reason to believe that a criminal statute has been violated, it shall contact the chief state's attorney or other prosecutorial authority.

D. The Commission may also recommend that legal action be taken against an offending party for any damages suffered by the town as a result of the violation of the Code.

~ 26-9. Advisory opinions.

Where any public official, employee or independent contractor has a question as to the applicability of any provision of this Code to a particular situation, or as to the definition of terms used therein, he or she may apply, in writing, to the Ethics Commission for an advisory opinion. Good faith reliance by a public official, employee or independent contractor on such an advisory opinion shall be a complete defense to any complaint brought before the Ethics Commission.

~ 26-10. Adoption of rules of procedure.

The Commission may adopt rules of procedure which it deems necessary to carry out the intent of this chapter, and the same and any amendments thereto shall be filed in the office of the Town Clerk and be available for public inspection. The discussions of the Commission held in executive session are to be confidential. The minutes of the Commission are public information and will be made available to the public through the Town Clerk's office.

~ 26-11. Severability.

If any section, subdivision, paragraph, sentence, clause or phrase of this chapter, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof.