



BOSTON CITY COUNCIL

RESEARCH OFFICE

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MEMORANDUM - ATTORNEY CLIENT COMMUNICATION PRIVILEGED & CONFIDENTIAL

To: Councilor Lydia Edwards
From: Christine O'Donnell, Esq., Compliance Director and Staff Counsel
Date: 1/22/2021
Re: Conflict of Interest Law

Introduction

The purpose of this memorandum is to discuss the state's Conflict of Interest Law, MGL Chapter 268A and its impact on the participation and voting by City Councilors on *Docket #0155, An Act Relative to the Office of Mayor in the City of Boston*, legislation that is currently before the City Council that will impact the 2021 municipal election. The memorandum will discuss the relevant provisions of Chapter 268A, the Massachusetts Constitution Article 89, section 8, and will analyze applicable case law.

Issues Presented

Does the state's Conflict of Interest Law, MGL Chapter 268A, prevent current City Councilors that have declared that they running for the office of mayor of the City of Boston and the Council President that will become acting mayor when a vacancy in office of mayor occurs prohibit those Councilors from participating in hearings, voting or any action on Docket #0155? Does the majority of the full City Council need to approve Docket #0155?

Brief Answers

Yes, the state's Conflict of Interest Law, Chapter 268A, section 19(a), section 23(b)(3), and section 23(b)(2)ii prevent current City Councilors that have declared that they are running for the office of mayor of the City of Boston and the Council President that will become acting mayor when a vacancy in the office of mayor occurs prohibit those Councilors from participating in hearings, voting or any action on Docket #0155. Yes, a majority of the full City Council, which is seven members, is required to meet local approval under the Massachusetts Constitution; therefore, seven Councilors must vote yes and the Mayor must sign Docket #0155 in order for the matter to proceed to the state legislature.

Analysis

The applicable state law that governs this issue is MGL chapter 268A, the state's conflict of interest law. Section 19(a) of this law would prohibit certain councilors from voting on Docket #0155 because they have a financial interest in the matter. Section 19(a) prohibits a municipal employee from participating in a matter in which he or she has a financial interest. City Councilors are municipal employees and therefore this section applies to them. The Councilors have a financial interest in the matter because this docket directly impacts the 2021 municipal election in which they are running and



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would go into effect immediately. The docket would also dispense with the requirement of having a special election which would benefit the person serving as acting mayor. See Graham v. McGrail, 370 Mass. 133; and EC-COI-87-16, State Ethics Commission Decision.

“Participate” under § 1(j), as appearing in 1962 Mass. Stat. ch. 779, § 1, means to participate personally and substantially as a municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. This definition encompasses more than the act of voting. To preside over a vote is to participate in it. To participate in the formulation of a matter for vote is to participate in the matter. See Graham. Participating in a matter would also include deliberating at a hearing, offering opinions on a matter, and voting on said matter. The matter in this case would be the proposed legislation that would change the special election requirements. A “particular matter,” under § 1(k), as appearing in 1962 Mass. Stat. ch. 779, § 1, means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding. See Graham. Here the Councilors that have already announced that they are running for Mayor could benefit from changes to the current special election requirements as well as the Councilor that will serve as Acting Mayor. Therefore, those Councilors are prohibited from participating in any hearing, vote, or deliberation on Docket #0155.

The next issue to examine is what constitutes local approval under Article 89, section 8, of the Massachusetts Constitution. Article 89, section 8 identifies the methods by which a city could petition the legislature to enact legislation that affected only that city. First, by petition filed or approved by the voters of a city. Second, by petition filed by a mayor and city council; and third, by petition from the town meeting of a town. Docket #0155 is using the second method and would therefore require the approval of the majority of the City Council and the Mayor before proceeding to the state legislature. The constitutional provision under consideration must be construed in accordance with the “fundamental principle of constitutional construction that every word and phrase in the Constitution was intended and has meaning,” Powers v. Secretary of Admin., 412 Mass. 119, 124, 587 N.E.2d 744 (1992), and such words and phrases “must be presumed to have been chosen advisedly. They must be given their ordinary meaning, and construed to accomplish a reasonable result.” Mount Washington v. Cook, 288 Mass. 67, 70, 192 N.E. 464 (1934). See Opinion of the Justices, 365 Mass. 655, 657, 311 N.E.2d 44 (1974) (constitutional provision “must be construed so as to accomplish a reasonable result and to achieve its dominating purpose”). For purposes of the question presented, the key words in § 8 are those that require “approval” of a petition to enact special legislation by “the mayor and city council.” The word “approval” literally requires approval by both the mayor and the city council, not by one or the other acting alone. The words of the Constitution are paramount and control and in order to meet the requirement of local approval a majority of the full City council, which is seven members, would need to vote in favor of Docket #0155. Please also refer to Rule 28 of the City Council Rules which state that seven members of the Council constitute a majority and that members that are excluded from voting by interest must vote “present.”

Conclusion



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The Councilors that have already announced that they are running for Mayor could benefit from changes to the current special election requirements as well as the Councilor that will serve as Acting Mayor. This legislation would directly impact them. Their interests are not too remote. The state law also prohibits municipal employees from acting in ways where an appearance of a conflict of interest exists. MGL chapter 268A, section 23(b)(3) prohibits municipal employees from acting in a manner that would cause a reasonable person to think that they would show favor toward someone, or that they can be improperly influenced. Further, municipal employees are prohibited from misusing their position under MGL chapter 268A, § 23(b)(2)ii. Therefore, those Councilors conflict out of voting or participating in any way on matters concerning Docket #0155 under MGL Chapter 268A, section 19(a), section 23(b)(3), and section 23(b)(2)ii. In order to meet the local approval requirement of Article 89, section 8 of the Massachusetts Constitution, a majority of the full City Council of seven members must vote in favor of the docket.