
MIRICK O'CONNELL

A T T O R N E Y S A T L A W

David K. McCay
Mirick O'Connell
1800 West Park Drive, Suite 400
Westborough, MA 01581-3926
dmccay@mirickoconnell.com
t 508.860.1460
f 508.983.6273

July 19, 2019

VIA E-MAIL AND FIRST CLASS MAIL

Brian Shea, Chair
Board of Selectmen
Town House
17 Common Street
Southborough, MA 01772

Re: Request for Special Municipal Employee Designation for Members of the Economic
Development Committee

Dear Chairman Shea:

I have been proud to serve the Town of Southborough as a member of the Economic Development Committee ("EDC") since 2012, including as Chair for five years. As you may know, in my day job, I am a partner at Mirick O'Connell where I represent property owners, developers and municipalities in environmental and land use disputes and permitting. To this point, my Firm has not undertaken any engagements that relate in any way to the EDC's work. It recently has come to my attention that a Firm client may advance a project proposal that arguably relates to ongoing work of the EDC. Although other attorneys in my Firm will handle that matter, and I will recuse myself from any EDC involvement on the proposal should the need arise, I write requesting that the Board of Selectmen designate the position of EDC member as "special municipal employees."

By way of background, my Firm represents a number of municipalities as Town Counsel, and we are Labor Counsel, School Counsel, or Special Counsel in dozens of others. My Firm also represents project applicants and opponents before municipal boards and committees in various communities. Over the years, the Firm has represented a variety of clients in Southborough. In addition to the practice of law, many of the attorneys in my Firm serve on town boards and committees in their home communities, which we encourage.

Special Municipal Employee Status

"Special municipal employee" status is a routine designation that promotes disclosure of potential conflict issues, allows our attorneys to contribute and volunteer in their home towns,

MIRICK, O'CONNELL, DEMALLIE & LOUGEE, LLP
WORCESTER | WESTBOROUGH | BOSTON

www.mirickoconnell.com

MIRICK O'CONNELL

Brian Shea, Chair
Southborough Board of Selectmen
July 19, 2019
Page 2

and allows those communities to enjoy the benefits our attorneys' experience and expertise. The designation was designed to permit and encourage individuals who may have business with a town (either individually or through a family member) to volunteer and serve in their communities. I understand that the State Ethics Commission encourages municipalities to grant "special municipal employee" status to any qualifying position, as this status provides flexibility and encourages volunteerism. This is particularly important on a committee like the EDC, which relies upon and encourages the participation of local businesses and non-profit organizations.

"Special municipal employee" status can be assigned to certain municipal positions by a vote of the Board of Selectmen under M.G.L. c. 268A, § 1(n). A position is eligible for "special" status provided that:

- the position is unpaid;
- it is a part-time position which allows the employee to work at another job during normal working hours; or
- the position is unpaid for more than 800 working hours (approximately 20 weeks full-time) during the preceding 365 days.

It is the position that is designated as having "special" status, not the individual. Therefore, all employees holding the same office or position must have the same classification.

Only two sections of the conflict of interest law apply less restrictively to "specials," §§ 17 and 20. All other sections governing regular municipal employees apply to "special municipal employees" in the same way. Section 17 generally prohibits municipal employees from representing a private party or anyone else before municipal boards or departments of the town they serve. Generally, a special municipal employee will be able to do work for someone before a municipal board or agency other than the one on which she serves, but not in relation to a matter before her own board or agency. Section 20 relates to having a direct or indirect financial interest in a contract with the Town.

Many communities regularly grant special municipal employee status to encourage volunteers to serve. In Southborough, members of the Advisory Committee and Board of Assessors currently have "special municipal employee status," as does Town Counsel and the Tree Warden.

Conclusion

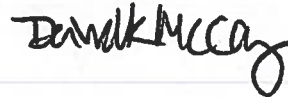
I hope this background and explanation is helpful. In the event that a conflict of interest arises related to my law practice and my work on the EDC, I will file any necessary disclosures and/or recuse myself from any EDC work and deliberations on that matter, as I have done in the past.

MIRICK O'CONNELL

Brian Shea, Chair
Southborough Board of Selectmen
July 19, 2019
Page 3

I am happy to answer any questions the Board may have, although I also encourage you to consult with Town Counsel as well. Thank you in advance for your consideration.

Very truly yours,



David K. McCay

DKM/ljg

cc: Board of Selectmen
Mark Purple, Town Administrator
Aldo A. Cipriano, Town Counsel
James F. Hegarty, Town Clerk