

**HARTFORD COURT OF COMMON COUNCIL HEARING
IN THE MATTER OF OLGA VAZQUEZ**

OLGA VAZQUEZ

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v.

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MARCH 12, 2015

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HARTFORD COMMON COUNCIL

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**REGISTRAR VAZQUEZ’S MEMORANDUM OF LAW IN SUPPORT OF HER
MOTION TO DISQUALIFY COUNCILMAN SHAWN WOODEN FROM TAKING
PART IN THE REMOVAL HEARINGS**

On March 9, 2015, the Hartford Common Council (“Common Council”) voted 8-1 in favor of proceeding with a hearing that has the potential to remove the City of Hartford’s elected Registrars of Voting. The Common Council will sit as judge and jury during the removal hearings, with Council President Shawn Wooden presiding over the Common Council. Mr. Wooden is an attorney and partner in the Day Pitney law firm.

The attached Motion to Disqualify is based on Council President Wooden’s real and apparent conflict of interests in the present case. As will be shown, not only does Councilman Wooden’s conflict of interest **diminish the Board’s appearance of impartiality but also simultaneously violates Registrar Vazquez’s due process rights to a fair hearing.**

Council President Wooden’s law partner at Day Pitney, James H. Rotondo, has been hired by the Common Council as one of the prosecuting attorneys in this case. It is his job to urge the removal of Ms. Vazquez from her

elected position. It would be wholly inappropriate for Wooden to be able to sit and adjudicate a decision in which he—and his law firm—has a direct, personal, and pecuniary interest.

It is well settled that the participation of just one biased member on a tribunal destroys the impartiality of the entire tribunal. There can be no public confidence in a decision rendered by a council whose members include one demonstrating a bias regarding the very issue that the council was authorized to determine.¹

Accordingly, Council President Wooden must either recuse himself or be disqualified from participating in the removal hearings of Registrar Vazquez.

LEGAL ARGUMENT

1. It Is A Clear Conflict of Interest To Allow Council President Wooden To Participate In A Decision In A Case In Which He Has A Direct, Personal, and Pecuniary Interest.

Council President's law partner, James H. Rotondo, is one of the attorneys hired by the Common Council to prosecute the removal of Registrar Vazquez.² Wooden and Rotondo are both partners at the law firm of Day Pitney in Hartford. Council President Wooden clearly has a direct, personal and pecuniary interest in Attorney Rotondo's success in prosecuting this case.

¹ Registrar Vazquez maintains the position that The Common Council does not have legal authority to remove the Registrars and that proceeding with the removal hearings is a violation of Connecticut's Home Rule Act.

² Attorney Rotondo, along with Attorney Ross Garber, was also one of the attorneys who oversaw the investigatory hearings regarding the Hartford Registrars.

Accordingly, Council President's private interests clearly conflict with the trust bestowed upon him by the citizens of Hartford.

It is well settled that "[p]ublic office is a trust conferred by public authority for a public purpose. The status of each member of the commission forbids him from placing himself in a position where private interests conflict with his public duty." Brunswick v. Inland Wetlands Commission, 29 Conn.App. 634, 637, 617 A.2d 466 (1992); see also Low v. Town of Madison, 135 Conn. 1, 8, 60 A.2d 774, 777 (1948) (public official must not place himself in a position in which personal interests may conflict with public duty). Although members of administrative councils typically have the benefit of a presumption of honesty and integrity, that presumption is far from absolute. Petrowski v. Norwich Free Academy, 199 Conn. 231, 238, appeal dismissed, 479 U.S. 802, 107 S. Ct. 42 (1986); see Withrow v. Larkin, 421 U.S. 35, 47, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975).

"A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to **prevent even the probability of unfairness. To this end . . . no man is permitted to try cases where he has an interest in the outcome.**" (Emphasis added.) Petrowski v. Norwich Free Academy, supra, 199 Conn. 239 (quoting In re Murchison, 349 U.S. 133, 137, 75 S.Ct. 623, 99 L.Ed. 942 (1955)).

"Disqualification is required when an adjudicator has a direct, personal, pecuniary interest in the outcome of the proceeding." (Internal quotation marks

omitted.) Id. at 241. To be sure, “[t]his prophylactic rule serves the salutary purposes of promoting public confidence in the fairness of the decision-making process and preventing the public official from placing himself in a position **where he might be tempted to breach the public trust bestowed upon him.**” (Emphasis added.) Petrowski v. Norwich Free Acad., supra, 199 Conn. 241.

Significantly, “[t]he test is not whether the personal interest does conflict but whether it reasonably might conflict.” (Emphasis added.) Id.

“A personal interest has been defined as an interest in either the subject matter **or a relationship with the parties** before the [local] authority impairing the impartiality expected to characterize each member of the [local] authority.” Thorne v. Zoning Comm’n of Town of Old Saybrook, 178 Conn. 198, 204-05, 423 A.2d 861, 864-65 (1979). When a member of an administrative hearing council “fails to disqualify himself despite a real conflict of interests, the action of the board on which he participated is rendered invalid.” Petrowski v. Norwich Free Academy, supra, 199 Conn. 241.³

In the present case, there are real conflicts of interest for Council President Wooden. It is undisputed that he participated in the decision to hire his

³ Indeed, Council President Wooden should have recused himself prior to voting on whether the Common Council possessed the authority to proceed with the removal hearings, given that his decision was based on a legal memorandum prepared by the Common Council’s legal advisor Allan B. Taylor arguing in favor of removal power.

Attorney Taylor was—up until very recently—also a law partner at Day Pitney. **As a result, the legitimacy of that vote is in doubt.** See Petrowski v. Norwich Free Academy, supra, 199 Conn. 241 (action of board rendered invalid when member fails to disqualify self due to conflict of interest).

law partner to investigate and prosecute Ms. Vazquez. It cannot be denied that Attorney Wooden has a direct, personal, and pecuniary interest in Attorney Rotondo's success in the case. Put differently, a victory for Attorney Rotondo is also a victory for Day Pitney—presumably the primary source of Council President Wooden's income. It also worth noting that the current legal advisor to the Common Council also was a partner at Day Pitney up until very recently, creating a further conflict of interest in an already conflicted situation. See Footnote 3 of this memorandum.

Council President Wooden might assert that he believes that he could adjudicate the hearings in good faith despite the apparent conflicts. However "[t]he good faith of the official is of no moment because it is the policy of the law to keep him so far from temptation as to insure the exercise of unselfish public interest." Low v. Town of Madison, supra, 135 Conn. 8.

The citizens of Hartford elected Ms. Vazquez. If a court of law determines that the Common Council has the authority to remove an elected official, the citizens should be assured that the adjudication of that process is free from conflicts of interest among the Council members.

Accordingly, it is respectfully requested that the Common Council disqualify Council President Wooden from participating in the foregoing proceedings.

RESPECTFULLY SUBMITTED,

Ms. Olga Vazquez

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