

**Board of Ethics  
Town of Brookfield  
c/o Town Clerk Office  
100 Pocono Road  
Brookfield, CT 06804**

**April 25, 2022**

Mr. Andrew Koehm  
5 Fernbrook Drive  
Brookfield, CT 06804

Re: C2022-02

Dear Mr. Koehm,

The Board of Ethics met in executive session on March 18, March 28, April 13, 2022 and April 25, 2022 to accept and conduct a probable cause investigation into your complaint which we identified only as C2022-02. We sent a copy of your complaint to the respondent and we have received no documents from the respondent nor did we speak with him during our investigation.

Our decision is based solely on the documents you have provided and with information we gathered in our probable cause investigation.

You supplied the following:

Our completed form, a page labeled attachment A and a page labeled attachment B, and a seven page document provided by the law firm of Marino, Zabel and Schellenberg to First Selectman Tara Carr, dated February 9, 2022 and identified as "Summary of Investigation; Proposed Amendment 16 in Brookfield Town Pension Plan."

You also provided the following exhibits:

- Exhibit 1: a. An unsigned copy of the proposed Amendment 16.  
b. Email correspondence in mid January, 2022 between Pamela Fleming from the Reid and Riege law firm and Dennis Kokenos, presumably from the Marino, Zabel and Schellenberg firm.
- Exhibit 2: a. Email correspondence that appears to be a duplicate of that provided in Exhibit 1.  
b. Email correspondence dated December 2 and 10, 2021 between Fern Smenyak, Brookfield Human Resources and Fleming.  
c. Email correspondence dated November 22 and 29, 2021 between F. Smenyak and P. Fleming
- Exhibit 3: Agenda for Board of Selectmen meeting on December 1, 2021.
- Exhibit 4: Email correspondence on November 15 - 17, 2021, between F. Smenyak and Marcia Marien, controller and email correspondence on November 12, 2021 between F. Smenyak and P. Fleming.
- Exhibit 5: Retirement Benefits Advisory Committee (RBAC) meeting minutes of November 18, 2021.
- Exhibit 6: Two invoices for professional services from the Reid and Riege law firm: one dated November 16, 2021 for services between October 19, to October 28, 2021 and one dated December 30, 2021 for services between November 1 to November 29, 2021,
- Exhibit 7: a. Memo dated November 29, 2021 from M. Marien to Steve Dunn, First Selectman and F. Smenyak with a four page calculation of cost for a possible amendment to the pension.
- Exhibit 8: RBAC meeting minutes of July 16, 2020.
- Exhibit 9: An undated very difficult memo to read presumably between Marcia Marien and John Lucas, Town Treasurer in which apparently M. Marien indicated that "We [unspecified] were so worried about his [unspecified] state of mind, Kevin [unspecified] locked him out of the bank accounts weeks ago. He never goes in, but now he can't."

- Exhibit 10: Email correspondence from F. Smenyak to S. Dunn dated November 22, 2021, with a forwarded message attached from P. Fleming to F. Smenyak, also dated November 22, 2021
- Exhibit 11: An email from S. Dunn to Michael Matson, chair of RBAC dated November 30, 2021, forwarding an email dated November 30, 2021 from F. Smenyak to S. Dunn with a copy to M. Marien, indicating an attachment, which was not included in the complaint document.

In our investigation we looked carefully at both the Charter, articles III and X, among other sections, as well as the entire Code of Ethics ordinance. We also reviewed numerous minutes of the Retirement Benefits Advisory Committee (RBAC), interviewed a member of that RBAC, and also looked at various minutes for the Board of Selectmen and Board of Finance and information from the Human Resources department.

## **FINDINGS**

1. The change to the RBAC originally made in 2016 was a result of a matter brought to the attention of the RBAC by then First Selectman William Tinsley, who wanted to be a participating member of the RBAC, but could not because he was also potentially eligible to receive a pension. We are attaching an opinion OP 2013-03 that we wrote and sent copies to the RBAC on December 30, 2013.
2. The RBAC determined that while both the First Selectman and Town Clerk positions are elected, it is rare for First Selectmen to be elected three or more times, while the Town Clerk is almost always reelected and ultimately receives a pension. Only one First Selectman has ever received a pension.
3. The RBAC determined that changing the compensation to the First Selectman from a pension to a stipend would allow the First Selectman to be a member of the RBAC. We learned from conversations with a member of RBAC that the stipend was approximately equal to the contribution the town had been making to the First Selectman's pension account. The difference with the change was that the First Selectman would decide how to invest the stipend rather than having the RBAC monitor the First Selectman and all other town pension accounts.
4. The Board of Selectmen voted in February 2016 to accept the recommendation of the RBAC and change the First Selectman benefit from a pension to a stipend. Newly elected Mr. Dunn abstained, as appropriate.
5. Mr. Dunn requested that the matter of the First Selectman receiving a stipend rather than a pension be revisited by the RBAC. The minutes of the RBAC for March 21, 2019 and July 16, 2020 will substantiate those requests. We also learned that the matter was again raised several times in early 2021 by Mr. Dunn to the RBAC chair and other RBAC members. At that time, the RBAC was heavily involved in revamping the pension plan to a hybrid model and did not take up the First Selectman pension/stipend issue until almost a year later, January 2022.
6. We learned that the RBAC had been using the services of the Reid and Riege law firm for many years to advise them on pension matters. No one from RBAC had the authority to secure those services. The typical procedure was for the First Selectman to initiate the request and would most likely have the Human Resources director or possibly the Controller work directly with that law firm to gather information and prepare a draft document prior to having the RBAC begin to discuss the matter.
7. Concerning the stipend/pension matter, the analysis was done by Reid and Riege and Amendment 16 was drafted sometime in mid-November 2021 to be presented to the RBAC and presumably to the Board of Selectmen soon thereafter.
8. As for this complaint, nothing has changed since February 2016 regarding the compensation for the First Selectman since the change was made from a pension to a stipend.

## DECISION

Only two elected positions existed in 2015 which would be eligible for a pension — the First Selectman, who serves a two-year term, and the Town Clerk, who serves a four year term. The reported thinking of the RBAC was consideration of the following: electors tended to reelected the Town Clerk far more often than the First Selectmen, and the current First Selectman could not serve on the RBAC if he were eligible for a pension. No change was made to the Town Clerk relative to a pension.

Mr. Dunn was the first recipient of this change, and he tried on many occasions to have the RBAC review the change beginning at least in 2019, again in 2020, and in early spring 2021. Please note that he abstained from the motion to change the pension in February 2016, just a few months after being elected.

We did not see that his repeated questioning of the pension/stipend change could be characterized as acting only for his own benefit. He was clearly thinking of the possibility of his or someone else's serving for three or more terms as First Selectman. Please see page C-4 of your complaint: "Smenyak indicated that Dunn said to her, 'I'm not just doing this for me. Tara is a lot younger and it wouldn't be fair that she not be entitled to a pension.'"

To suggest that Mr. Dunn brought up this matter only in the last month or year of his term is simply not true.

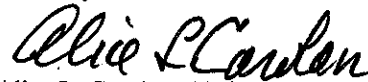
To the matter of whether Mr. Dunn elected a stipend rather than a pension (see p. 3, attachment B), we did not find evidence that occurred. It was our understanding that the matter was resolved as of February 2016, that the First Selectman would receive a stipend and not a pension. Mr. Dunn abstained but tried on several occasions after that, beginning at least in 2019, to have the RBAC revisit that change.

We found that there was apparently little difference to the town as far as cost was concerned if the First Selectman received a stipend or pension. The change appears to have been prompted primarily to address the former First Selectman Mr. Tinsley's wanting to attend the RBAC as a participating member.

As to the matter of Mr. Dunn using the Reid and Riege law firm, it is well within the authority of the First Selectman to seek legal advice concerning matters related to the town such as deliberations of the RBAC. We learned that the procedure followed for years by the RBAC was for the First Selectman to initiate the action with the Reid and Riege firm and authorize the Human Resources Director to be the contact person to gather legal advice and drafts of documents to present to the RBAC prior to the RBAC's discussion of possible changes to recommend to the Board of Selectmen. Please note on the two Reid and Riege invoices (c-35-38) how often F. Smenyak, Director of Human Resources, is the contact person.

For the reasons stated above, we do not find this complaint rises to the level of probable cause. Because we did not reach that threshold, this complaint must remain confidential, per state statute 1-82a, which has already been provided to you. As we noted earlier, only the respondent, Mr. Dunn, may make any aspect of this complaint public.

Sincerely,



Alice L. Carolan, Chair Board of Ethics

ENC: Board of Ethics Opinion 2013-03

CC: Respondent Steven Dunn

Board of Ethics members: Christine Hand, James Sullivan

Town Clerk Office Board of Ethics confidential file

**Brookfield Board of Ethics  
c/o Town Clerk's Office  
100 Pocono Road  
Brookfield, CT 06804**

December 30, 2013  
Opinion 2013-03

We have been asked whether a person may sit on the Retirement Benefits Advisory Committee as a fully participating member, if that person is already receiving a town pension, or would be eligible to receive one in the future based on his/her position in town.

Someone eligible for a town pension has a clear personal, financial interest in the deliberations, discussions or votes on matters coming before the pension board.

Section 21-4-C of the Code of Ethics states:

*Deliberation and vote prohibited. No officer/employee shall vote, act, participate in official discussions or give official opinions on matters in which he has a direct or indirect financial or other personal interest.*

We reviewed Ordinance 57, which pertains to your committee's membership:

57-2 Membership; terms of office, vacancies.

A. The Committee shall be comprised of the Town Treasurer, one member of the Board of Selectmen, one member of the Board of Finance, plus three electors of the Town of Brookfield, all of whom shall be appointed by the Board of Selectmen. When possible, the appointed electors shall be knowledgeable in the general field of pension plans and investments. The Town Controller shall be an ex-officio member of the Committee. The Director of Business and Technology Operations of the Board of Education shall also be an ex-officio member of this Committee. No voting member of this Committee shall be a beneficiary or future beneficiary of the Town's retirement benefit plans. [Amended 1-3-2012].

We have attached a list of people who are eligible to receive a town pension, and would therefore be ineligible to serve as voting members of your committee. We recommend you update this list to ensure that ineligible employees are not serving on your committee. We are also enclosing opinion, O2011-03 concerning certain selectmen voting on town pension matters

Sincerely,



Alice L. Carolan, Chair  
Board of Ethics

CC: Members of the Board of Ethics: Joni Park, James Sullivan  
Board of Selectmen  
Members of the Retirement Benefits Advisory Committee  
Town Clerk: Joan Locke