

MONAGHAN LEAHY, LLP

ATTORNEYS AT LAW

THOMAS G. LEAHY
KEVIN G. LIBBY
CHRISTOPHER C. DINAN
JOHN J. WALL, III
KENNETH D. PIERCE
CORNELIA S. FUCHS
ZACHARY I. GREENFIELD
ERICA M. JOHANSON
PATRICK D. THORNTON

THOMAS F. MONAGHAN
OF COUNSEL

95 EXCHANGE STREET
P.O. BOX 7046
PORTLAND, MAINE
04112-7046

TEL 207-774-3906
FAX 207-774-3833
tleahy@monaghanleahy.com

November 8, 2011

David S. Sherman, Jr., Chair
Town Council
Town of Cape Elizabeth
P.O. Box 6260
320 Ocean House Town
Cape Elizabeth, ME 04107

Ré: Query Concerning Conflict of Interest

Dear David:

You have asked us for an opinion as to whether a sitting Council member can also accept employment as a part-time teacher in the Town's schools. Having reviewed the Town Charter and pertinent statutes and case law, it is our opinion that a Council member is precluded from working as a teacher even in a part-time capacity.

On its face, the Town's Charter appears reasonably clear on this issue. As you know, the Charter contains a "conflict of interest" provision which states: "No full or part-time employee of the Town or School Department shall serve in any local elected office, provided that this provision shall not prohibit a volunteer member of the Cape Elizabeth Fire Department from serving as an elected official, provided that this subsection shall not apply to a person serving in a part-time position and as an elected official at the time of adoption of this section." (Charter at 11). The pertinent portion of this section expressly forbids elected officers from holding part-time employment with the school department.

This Charter provision would appear to be an augmented version of 30-A M.R.S.A. § 2606, which prohibits municipal officers from being appointed to a municipal employment position which was created or received a compensation increase during the officer's term of office and for one year thereafter. Of course, there is nothing that restrains the Town from adopting a more stringent conflict-of-interest policy. A wholesale prohibition against simultaneous Town employment ensures that an elected official cannot be placed in a situation in which the temptation to serve his or her own pecuniary interest may affect his or her service. *See Tuscan v. Smith*, 130 Me. 36, 46 (1931) (stating the common law rule for municipal conflict of

David S. Sherman, Jr., Chair
Town Council
Town of Cape Elizabeth
November 8, 2011
Page 2

interest to be “whether the town officer by reason of his interest is placed ‘in a situation of temptation to serve his own personal interests to the prejudice of the interests of those for whom the law authorized and required him to act in the premises as an official.’”). Moreover, such a policy will prevent even an appearance of impropriety.

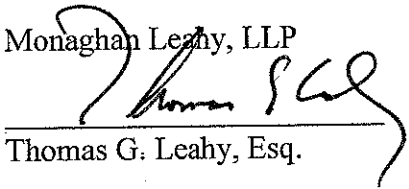
Finally, State law provides a certain minimum compensation for substitute teachers. 20-A M.R.S.A. § 13402(3). Therefore, it appears likely that whether the position is described as a “part-time” teacher or as a substitute, the person would be considered an employee.

Please let me know if we can provide you with any further assistance with regard to this issue.

Best regards,

Monaghan Leahy, LLP

By:


Thomas G. Leahy, Esq.