

OFFICE OF THE CORPORATION COUNSEL OPINION



To: Honorable Jorge Perez, President of the Board of Aldermen
From: Victor A. Bolden, Corporation Counsel
Date: September 4, 2012
Re: 360 State Street proposal and Board of Aldermen liability

Issue

Whether the Board of Aldermen may be held liable individually and/or collectively for deciding not to address a property tax matter now pending in Superior Court?

Short Answer

No. Connecticut law extends immunity to members of the Board of Aldermen for decisions made within the scope of their legislative duties. Certainly, a decision not to resolve a matter through the adoption of a twenty to forty-year legislative agreement, while litigation regarding this subject matter is ongoing in court, is within the scope of the Board of Aldermen's legislative duties and immunity should attach to such an action.

Relevant State and Local Law Provisions

Conn. Gen. Statutes Section 52-557n
Charter, Article IX, Section 37

Discussion

Pending before the Board of Aldermen (or "BOA") is a proposal to amend and/or extinguish current agreements existing between the City of New Haven and the property owners of 360 State Street and, in lieu of the agreements currently in effect, have the BOA adopt a long-term tax agreement. The proposal currently pending before the Board of Aldermen is the subject of an earlier opinion by this Office, released on August 17, 2012, whose content will not be recounted here. The matters now jointly referred to the BOA's Legislative and Tax Abatement Committees are the subject of a

motion to discharge by the Honorable Jessica Holmes and the Honorable Michael Smart, respectively the Chairs of the Legislative Committee and the Tax Abatement Committee. In their letter to President Perez seeking discharge of these items, the Chairs state the following:

The issues related to these items are currently in court and therefore we respectfully request that our committee be discharged from considering these items and the items be given leave to withdraw.

Letter from the Honorable, Jessica Holmes, Alderperson and Chair of the Legislation Committee and the Honorable Michael Smart, Alderperson and Chair of the Tax Abatement Committee to the Honorable Jorge Perez, President, Board of Aldermen, dated September 4, 2012, attached as Exhibit A.

As a result of this letter and the potential action by the Board of Aldermen to discharge from current consideration the issue of a new and revised long-term tax agreement for the owners of 360 State Street, an issue has arisen as to whether the members of the Board of Aldermen either individually or collectively can be subject to liability, if the BOA decides to withdraw this matter while litigation is pending.

As a preliminary matter, the subject of litigation against the Board of Aldermen or its individual members is a curious one. As the earlier August 17, 2012 Opinion makes clear, the parties already agreed that the property at 360 State Street would “remain, subject to real estate tax and in no event shall the Developer or any successor or assignee seek exemption from such taxes.” See August 17, 2012 Office of the Corporation Counsel Opinion at 2 (quoting Land Disposition Agreement at Section 2.7(B), a document incorporated in the Development Agreement).

In addition, the Tax Deferral Agreement between the two parties further provides that if the owners of 360 State Street receive a tax abatement, an additional deferral of taxes or a [payment in lieu of taxes] agreement, then “all deferrals created [by the Tax Deferral Agreement] shall be null and void and the Owner shall pay a penalty equal to all taxes abated to date by the Agreement.” See *id* at 3-4 (quoting Tax Deferral Agreement at Section 802). Thus, given the express contractual obligations of the parties, there does not appear to be anything improper in the BOA deciding to allow the owners of 360 State Street’s current litigation to run its course.

Moreover, “[i]t has been well established that a city’s charter is the fountainhead of municipal powers . . . [t]he charter serves as an enabling act, both creating power and prescribing the form in which it must be exercised.” *Fennell v. Hartford*, 238 Conn. 809, 813 (1996) (citations and internal quotation marks omitted). Under the City’s Charter, it is not any individual member of the Board of Aldermen but the Board of Aldermen, acting as a legislative body, that has the authority to “exercise all of the powers conferred upon [the] city, except as otherwise provided.” Charter, Article IX, Section 37(a). As a result, it is a dubious proposition that an individual member of the BOA could be sued based on the actions of the entire BOA. See *Waterbury Homeowners Ass’n v. City of Waterbury*, 28 Conn.Supp. 295 (Conn.Super. 1969) (“Only one member of the board of aldermen, Zollo, has been named as a defendant, and clearly he alone, even as president of the board, has no control over [the issuance and sale of

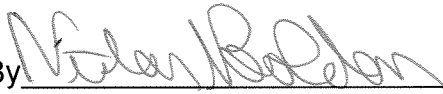
bonds]”). Indeed, to act, a “majority of all of the members of said board shall constitute a quorum for the transaction of business, and the vote upon any question shall be taken by yeas and nays at the request of one-fifth of the members present.”

Finally and perhaps, most importantly for these purposes, actions taken by the BOA within its legislative discretion and consistent with its legislative duty are entitled to immunity under, *inter alia*, Conn. Gen. Stat. Section 557n. Since, as discussed above, the BOA is permitted to “vote upon any question,” it certainly is within the BOA’s discretion to decide whether to discharge the legislative matters regarding 360 State Street now.

This opinion is limited to the issue set forth and does not apply to any other situation not discussed herein.

Dated at New Haven, Connecticut, this 4th day of September, 2012

Office of the Corporation Counsel

By 
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Corporation Counsel

cc: Office of the Corporation Counsel Opinion Book