

Select Board Report on Investigation into Municipal Ethics Complaint

Introduction

The purpose of this report is to address concerns raised by a member of the public regarding an action by the Brandon Trustees of Public Funds (TPF); specifically, complaints that two of the trustees committed ethics violations when voting to approve an award of \$20,000 to the Otter Valley Activities Association (OVAA) on March 3, 2023. For the reasons set forth below, we conclude that, at most, one trustee's past association with the OVAA could cause a reasonable person to believe that the trustee had an indirect, non-financial personal interest in the outcome of the vote and, pursuant to the Town of Brandon's policy on conflicts of interest and ethical conduct, should have disclosed that association.¹ We also conclude that the complaint was partially the result of a perceived lack of transparency on the part of the TPF and, therefore, offer certain recommendations on how to avoid such complaints in the future.

Background

On March 9, 2025, a resident of Brandon filed a pair of ethics complaints alleging that two members of the TPF had violated the state's newly effective Municipal Code of Ethics when, in 2023, they voted to approve a request by the OVAA to fund a feasibility study for a regional recreational center. The complaint alleged that both trustees had a direct conflict of interest in regard to the request and further alleged that they had misused their positions in granting the request.

Specifically, the first complaint alleged that, at the time of the OVAA's request, Tanner Romano was a member "and probable director" of an entity called the Valley Community Center (VCC), and that the OVAA was simply a "pass thru" for the VCC to obtain funds "to develop plans for the recreation center that would have limited membership, dues, and require property taxes from towns." The complaint also noted Mr. Romano's past involvement in OVAA activities. The complaint further alleged that the disbursement to the OVAA did not fall within the guidelines of Shirley Farr's will that established the trust, because "it involves [a disbursement to] a quasi-private entity and not to the direct benefit of the village." Finally, the complaint alleged that on February 26, 2025, when discussing a proposal that the school district transfer certain property to the VCC for construction of a community center, Mr. Romano referred to a feasibility study as

¹ The Vermont Code of Municipal Ethics (the Code) came into effect on January 1, 2025. The events underlying the complaints predated the effective date of the Code by almost two years and, therefore, are not subject to the Code. The Town of Brandon's policy was adopted in 2019, however, and thus was in effect at the time of the decision under review. Accordingly, the town policy applies to the substance of the complaint.

“the next step” in the process, suggesting that any disbursed funds had not yet been used. The complaint did not ask for any specific action be taken against Mr. Romano but did demand that any funds disbursed for the feasibility study be returned to the Fund.

The second complaint regards Laura Miner and appears to be based solely on her familial relationship with one of Mr. Romano’s employees, stating that her relationship “is obviously a conflict and ethical violation.”

Investigation Process

Following receipt of the complaints, the Select Board determined that, on their face and without resort to outside evidence, the allegations in the complaints could be read by a reasonable person to state a potential violation of the town’s conflict of interest policy. Accordingly, by reference to the process adopted by the Select Board prior to the receipt of the complaints, the Board appointed two members to investigate the complaints. The team reviewed the complaints and the supporting evidence provided by the complainant and the applicable policies.² The team then conducted interviews with the named trustees.

Findings

1. The Trustees of Public Funds are elected officials, three in number, who have been tasked with administering a bequest to the Town of Brandon by the late Shirley Farr “to be used by [the town] primarily for proper sewage disposal, drainage of swamps and other sanitary improvements and any amounts not needed and expended for such purposes shall be used for spraying trees or in the general improvement of the village in ways not sufficiently provided for by taxation.” The TPF have an application process by which individuals or entities may propose projects for funding. Each year, the TPF publish a record of their activity in the Town Report.
2. The TPF is subject to Vermont’s open meeting rules. The TPF do not hold regularly scheduled meetings throughout the year; rather, they meet on an *ad hoc* basis to discuss and vote on requests for funding as they are made. Once a year the TPF meet to conduct business related to the endowment as required by law. In recent years, the TPF have conducted their meetings at the offices of Naylor & Breen on Route 7, usually on weekday mornings.

² Again, in this case, the applicable policy is that adopted by the Town of Brandon in 2019 and not the Code of Ethics enacted by the Vermont State Legislature, which was not in effect at the time of the complained of acts.

3. The Otter Valley Activities Association is a 501(c)(3) non-profit organization that serves as a “booster club” for the various activities (athletic and otherwise) engaged in by students at the Otter Valley Union Middle and High Schools (OVUMHS).
4. The Valley Community Center (VCC) was a concept for a community center that would be located on land adjacent to OVUMHS that would provide athletic facilities to be used by the school as well as recreational facilities available to surrounding towns. To succeed, the plan relied on the school district transferring the property to the VCC for a *de minimis* amount. After a majority of district voters rejected the proposed property transfer, the OVAA and the VCC discontinued their efforts to move forward with planning for the center. At the time of the vote, the concept was still in the draft phase.
5. Mr. Romano was last elected to a three-year term in 2023.
6. Ms. Miner was last elected to a three-year term in 2024.
7. Mr. Romano is the owner of a local construction firm, Naylor & Breen. In that capacity, he is frequently asked to support charitable causes, including the OVAA. Mr. Romano has also been actively involved in the sports programs at OVUMHS, which are among the activities supported by the OVAA.
8. Of the \$20,000 pledged by the TPF to the OVAA, only \$10,000 was disbursed in fiscal year 2022- 2023. Although the TPF’s portion of the annual Town Report for fiscal year 2023-2024 showed an expenditure of the second \$10,000 pledge, Ms. Miner explained that was the result of a bookkeeping action that the TPF used to reflect pledges that were made in a fiscal year but which the recipients might not be ready to receive, so as to ensure that the TPF stays within its annual spending limits. The OVAA never received the second \$10,000 pledged.
9. The TPF does not require grantees to provide receipts or progress reports on the projects it funds. Once they have disbursed the funds, the TPF does not track how the funds are applied.

Discussion

In May 2019, the Brandon Select Board adopted a Policy Regarding Conflicts of Interest and Ethical Conduct for the Town of Brandon (<https://tinyurl.com/3drrk9r2>). The stated purpose of the policy is

[T]o ensure that the business of this municipality will be conducted in such a way that no public officer of the municipality will gain a personal or financial advantage from his or her work for the municipality and so the public trust in its officers will be preserved. It is also the intent of this policy to ensure that all decisions made by public officers are based on the best interests of the municipality.

The policy “applies to all individuals elected or statutorily appointed to perform executive, administrative, legislative or quasi-judicial functions of the Town of Brandon.” As relevant to this discussion, the policy defines a “conflict of interest” as

A real *or seeming* incompatibility between a public officer’s private interest and his or her public or fiduciary interests to the municipality her or she serves. A conflict of interest arises when there is a direct or indirect personal or financial interest of a public officer or a person or group closely tied with the officer including his or her spouse, household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, brother- or sister-in-law, business associate, or employer or employee, in the outcome of an official act or action, or any other matter pending before the officer or before the public body in which the public officer holds office. A conflict of interest may take any of the four following forms:

- a. A direct financial conflict of interest arises when a public officer acts in a matter that has a direct financial impact on that officer.
- b. An indirect financial conflict of interest arises when a public officer acts in a matter that has a financial impact on a person or group closely tied to the officer.
- c. A direct personal conflict of interest arises when a public officer acts in a matter that has a direct impact on an officer in a non-financial way but is of significant importance to the officer.
- d. *An indirect personal conflict of interest arises when a public officer acts on a matter in which the officer’s judgment may be affected because of a familial or personal relationship or membership in some organization and a desire to help that person or organization further its own interests.*

(Emphasis added)

The policy further provides that “a ‘conflict of interest’ does not arise in the case of an official act or action in which the public officer has a personal or financial interest in the outcome * * * that is no greater than that of other persons generally affected by the decision.”

The policy requires an official who may have a conflict of interest—whether real or perceived—in a matter before the public body of which the officer is a member to publicly disclose the

potential conflict before any action on the matter. The policy further provides that, after making such disclosure, the officer “shall declare whether he or she will recuse him or herself and explain the basis for their decision.” The policy allows the public officer to avoid recusal if, in spite of the conflict, the officer “believes that he or she is able to act fairly, objectively, and in the public interest.” In such a case, the officer shall state for the record why they believe they meet that criterion. Where the official is an officer of an elected body, the other members may state their opinions on the issue, but absent a governing ordinance or charter, they may not force the recusal of the officer.

As noted above, the TPF are elected officials that administer a bequest to the Town of Brandon from Brandon resident Shirley Farr. Upon Farr’s death and the receipt by the town of the bequest, Vermont state law required the town to elect trustees to manage the bequest, but the trustees act independently of town government. The trustees consider applications for grants based on the text of Ms. Farr’s will and, where the text is ambiguous, their interpretation of the text. As officials elected to administer the Farr bequest, the TPF are subject to the town’s conflict of interest policy.

The complaints under review challenge Mr. Romano and Ms. Miner’s decision to act on the OVAA’s application for a grant to fund a feasibility study for a community recreation center. Specifically, the allegations in the complaint against Mr. Romano suggest that he had a direct financial and personal interest in the grant for the feasibility study because he is a member “and probable director” of the VCC and “quite possibly also a party to the activities of the OVAA.” The complaint against Ms. Miner alleges that her vote in favor of the OVAA request was “obviously a conflict and ethical violation” because she has a relative that works for Mr. Romano’s construction business.³ The complaints taken together also appear to suggest that the complainant is concerned that Mr. Romano’s construction business would somehow benefit from the grant.

Our investigation reveals no direct or indirect financial conflict of interest in the OVAA vote for either Mr. Romano or Ms. Miner. There is no evidence that, at the time of the vote, the VCC as an entity existed or, even if it existed, that either trustee would see any financial benefit from the creation of the recreational center. To conclude that either trustee, at the time of their vote, stood to benefit from it financially would requires too many speculative leaps: that the VCC existed; that Mr. Romano was a member/director of the VCC; that Mr. Romano’s construction company would bid on, and be awarded contract for, construction of the recreation center; and that Mr. Romano and his employees would benefit financially from the operation of the VCC. In

³ The complaints also alleges that the TPF’s decision as to the OVAA request “is also questionable as to whether the request for funds fell within the guidelines of the Shirley Farr Fund[.]” This concern is outside the purview of the Town’s conflict of interest policy or of the Select Board. Concerns about the relationship of requests for funding and the Fund’s guideline are best presented to the TPF for response.

short, there is no evidence that either Mr. Romano or Ms. Miner had a financial interest in the outcome of the vote “greater than that of other persons generally affected by the decision.”

That leaves the allegation that Mr. Romano had a personal interest in the outcome of the vote because of his alleged involvement in the VCC and his past involvement in other OVAA activities. The town policy defines a direct personal conflict of interest to include matters “of significant [non-financial] importance to the officer,” and defines an indirect personal conflict as “a matter in which the officer’s judgment may be affected because of a * * * membership in some organization and a desire to help that * * * organization further its own interests.”

Again, it requires too many speculative leaps to determine that—*at the time of the vote on the OVAA’s request for funds for a feasibility study*—Mr. Romano had a relationship with the VCC and desired to help the VCC. Mr. Romano’s relationship with the OVAA, on the other hand, merits more discussion.

As noted above, the OVAA is a booster club for student activities at OVUMHS. Mr. Romano has acknowledged that he has a relationship with the OVAA and has donated services to the OVAA in the past, as well as assisted with fundraising. It is at least arguable, then, that Mr. Romano had an indirect personal interest in the outcome of the vote to the extent that his vote could help the OVAA further its own interests. In other words, because a reasonable person could question Mr. Romano’s association with the OVAA at the time of the vote on the grant for a feasibility study, there is a *perception* of a conflict of interest, even if there was no actual conflict. And as is too often the case, the perception of a conflict can be as damaging to the reputations of the parties involved as an actual conflict.

Conclusion

For the reasons set forth above, we find that neither Mr. Romano nor Ms. Miner had any direct or indirect financial interest in the outcome of the vote on the OVAA’s request for funds for the feasibility study. Further, Ms. Miner had no direct or indirect personal interest in the outcome of the vote. However, Mr. Romano had what could be perceived by a reasonable person as an indirect personal interest in the outcome of the vote because of his relationship with the OVAA. That perception could have been cured by Mr. Romano stating his relationship with the OVAA on the record, and then either recusing himself or explaining why, despite his perceived conflict of interest, he was nevertheless able to act “act fairly, objectively, and in the public interest.”

The town policy provides that, in the event that an elected official has been found to have taken an official act despite an actual or perceived conflict of interest, without first following the procedures for revealing the conflict and explaining their decision not to recuse themselves, the Select Board may admonish the officer at a public meeting, provided the officer is given the

opportunity to address the admonishment. The policy further provides that the Select Board, on a majority vote in an open meeting, may request—but not order—the elected official resign from his or her office.

Before this report was finalized, Mr. Romano announced his resignation as a Trustee of Public Funds. Accordingly, we do not believe that the public interest would be served by either a public admonishment of Mr. Romano, or by a request that he resign his position. It is clear, however from the content of the complaints and the discussion that has surrounded them, that there are public concerns about the TPF and their review of requests for funds. We believe that most of those concerns can be alleviated by more interaction between the public and the TPF.

Accordingly, we offer the following recommendations:

- In conformance with other public bodies, the TPF should schedule regular meetings at which to discuss requests for funding received during a designated time period and at which the public can raise any questions about requests for funding. Those meetings should be held in an easily accessible public place, such as the meeting rooms at Town Hall or the library, at a time that would allow for more public participation. Offering a ZOOM link for remote meetings is also helpful but should not be a substitute for a more accessible place and time. These meetings need not be numerous and can be canceled if there is no business to conduct.
- The TPF should add the Brandon Front Porch Forum to the list of places that it publishes its warning and agenda for meetings, to ensure a more widespread notice.
- In any case in which a reasonable person might perceive that a trustee's vote may be affected by the trustee's other affiliations or relationships, the trustee should follow the procedure set out in the town's policy regarding disclosure and recusal. We understand that in a small town like Brandon there is a relatively small pool of individuals willing and able to volunteer for public office, and there will be cases in which the perception of a conflict cannot be avoided. Accordingly, we emphasize that the test is what an objectively reasonable person would perceive from a set of provable facts; it does not require the trustees (or any public officials) to entertain concerns based on pure speculation, or which require the piling of inference upon inference to reach a conclusion. Rather, it simply requires the trustee to take an objective view of his or her relationships with the organizations appearing before them and consider how those relationships may appear to a member of the public.⁴
- To ensure transparency about the use of public funds, the TPF should require grantees to provide updates on the use of the funds and the results of the projects funded and should make those updates available to the public upon request.

⁴ This third recommendation is applicable to ALL town officials, elected or appointed; not just the TPF.

- Finally, if any funds disbursed to the OVAA for the feasibility study remain unspent, the TPF should make efforts to recoup those funds.

NOTE Added May 13, 2025:

Mr Romano, Ms Miner, and Mr Buehler were provided this report immediately after the selectboard vote of May 12, 2025 adopting the report. The board voted to make the report public 24 hours after providing the report to the complainant and subjects of the complaint.

Mr Romano disputes Finding #7 and the conclusions drawn therefrom.

In line with the vote of the selectboard, the report is made public with his response above added following the final page of the document.

**Respectfully submitted,
Seth Hopkins, town manager**

Please see next page for clarifying statement adopted by unanimous selectboard vote of May 26, 2025.

Statement Re: Report on Ethics Complaint/Trustees of Public Funds

At the May 12, 2025, meeting of the Brandon Select Board, the Board approved and adopted the Report on the Investigation of Ethics Complaints against two members of the Trustees of Public Funds regarding a pledge for \$20,000 by the TPF to the Otter Valley Athletics Association. After the report was distributed, the original complainant contacted the authors of the Report and demanded the report be withdrawn and changed. The complainant was upset that the Report addressed the issue of potential financial conflicts of interests on the part of the Trustees, even though the complaints themselves did not expressly allege the existence of a financial conflict of interest.

The complainant is correct that his complaints did not expressly state that either Tanner Romano or Laura Miner had an undisclosed financial interest in the outcome of their decision to pledge \$20,000 to the OVAA.

However, both complaints did allege that the OVAA was simply acting as a “pass-through” for another entity, the VCC, and alleged that Trustee Romano was a “member, and probable director” of the VCC. A reasonable reader could understand the complaint to be concerned not only with any personal interest the Trustees had in the OVAA, but also with the possibility that, as a “probable director” of the VCC, Mr. Romano may have had financial interest in the funds request. Moreover, once the complaints were accepted by the Board for investigation, the Board had an independent responsibility to analyze the allegations in light of Brandon’s policy on conflicts of interest in light of information gathered during the investigation. Finally, appropriate analysis of the issue required examining all the forms which a conflict of interest could manifest, and address whether any of those forms were implicated. That is what the Report did.

The Report is available for review on the town’s website. Citizens are advised to read the Report for themselves, rather than rely on media interpretations or word of mouth. The Board understands that many readers of the Report have been dissatisfied with its contents. That is to be expected in these situations. The Board stands behind its investigation and its Report. The Board considers this case to be closed.