



CITY OF SOMERVILLE, MASSACHUSETTS
LAW DEPARTMENT

July 1, 2014

Honorable Board of Aldermen
City Hall
Somerville, MA 02143

Re:: COLA Increase Resolution Vote

Dear Honorable Board Members:

You have asked whether members of the Board of Aldermen may vote on a resolution urging the Somerville Retirement Board to vote for a COLA for retirees.

For the reasons stated below, in my opinion, members who have vested may not vote on the resolution. However, in my opinion, members who have not vested may be able to vote on the resolution, because their rights to receive retirement benefits are speculative.

General Laws Chapter 268A, § 19 generally prohibits municipal employees, including elected officials, from participating in a particular matter in which they have a financial interest.

Participation includes both formal and informal lobbying of colleagues, reviewing and discussing, giving advice and making recommendations, as well as deciding and voting on particular matters. EC-COI-92-30. The financial interest may be of any size and may be either positive or negative; it must, however, be direct and immediate or reasonably foreseeable. Financial interests that are remote, speculative, or not sufficiently identifiable do not raise an issue under Section 19. EC-COI-93-20; EC-COI-84-98.

Whether a financial interest is reasonably foreseeable must be determined on a case-by-case basis. Board members financial interests are not necessarily the same. EC-COI-98-4.

In my opinion, for those Board members whose rights to receive retirement benefits have not yet vested, their personal interest might be too remote to implicate section 19. See EC-COI-98-4. However, in my opinion, a Board member whose rights have vested does have a reasonably foreseeable financial interest in a resolution relative to a COLA.

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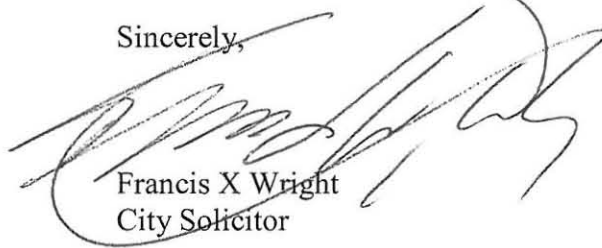
I recommend that each member provide this office with information as to when their rights to receive retirement benefits will vest, so that we can make a legal determination whether your financial interests are reasonably foreseeable.

If there is a lack of quorum due to Section 19 conflicts, in my opinion, the Rules of Necessity may not be used because an elected board must be legally required to act on a matter in order to invoke that Rule. Commission Advisory 05-05.

If one or more Aldermen would like this office to inquire of the State Ethics Commission counsel for a determination as to whether they concur with this opinion, upon request of one or more Aldermen, I will request an opinion.

Please feel free to contact me with any additional questions.

Sincerely,



Francis X Wright
City Solicitor