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OPINION NO. 18-01

OPINION OF THE CORPORATION COUNSEL

I. Background and Facts

A question has been raised regarding whether Sean Fitzpatrick, Director of the Department of Development Services, is in compliance with the residency requirements of Article XVIII, Section 2-850 of the Hartford Municipal Code.¹ By way of brief background, an article was recently published in the Hartford Courant which called into question Mr. Fitzpatrick's current residence at the Town and Country Club, located at 22 Woodland Street in Hartford. This office has been asked to opine on the legal questions raised.

The following facts are relevant to the within analysis: (1) In June 2016, Mr. Fitzpatrick signed a lease with the Town and Country Club, specifically for Room #6, The Hunt Room; (2) Mr. Fitzpatrick receives mail at the 22 Woodland Street address; (3) Mr. Fitzpatrick is registered to vote in Hartford; and (4) Mr. Fitzpatrick has registered two motor vehicles in the City of Hartford.²

¹ As detailed herein, Mr. Fitzpatrick, as a department head appointed by the Mayor, would be required to comply with the residency requirements of Section 2-850 of the Municipal Code.

² Mr. Fitzpatrick provided the following documents for review: (1) the lease with the Town and Country Club signed on June 29, 2016; (2) his notice of application to register to vote received from the City of Hartford Office of the Registrar of Voters; (3) payment detail sheets (generated from the City of Hartford Tax Collector's Office) for car tax payments made; and (4) a copy of a mailing envelope from the Tax & Assessment Divisions of the City of Hartford to Mr. Fitzpatrick at the 22 Woodland Street address. Mr. Fitzpatrick has represented that, to date, he continues to hold the lease at 22 Woodland Street.

II. Law and Analysis

A. Article XVIII, Section 2-850 of the Hartford Municipal Code

Article XVIII, Section 2-850 of the Hartford Municipal Code provides as follows:

(A) All council and Mayor appointees and Unclassified Employees employed by the City, shall maintain a continuous residence in the City during the period of such appointment or employment. This section shall not apply to new employees or appointees during the first six (6) months of such employment or appointment. If such individual ceases to be a bona fide resident of the City once the residency has been established or fails to become a bona fide resident within six (6) months of the appointment or employment, the Council shall, by a vote of seven (7) members, send notice to the mayor that pursuant to the provisions of Chapter V, section 3(c) of the Hartford Charter, the office or position of the individual who has failed to remain a bona fide resident of Hartford shall thereupon become vacant, and such appointment or employment shall terminate.

Bona fide resident is defined as:

- (1) An employee who has a Hartford mailing address. A post office address does not qualify as a bona fide Hartford address;
 - (2) Be a registered Hartford voter; and
 - (3) If the employee owns a motor vehicle, said motor vehicle must be registered in the City of Hartford
- (B) The provisions of subsection (A) above shall not apply to individuals who were employees and appointees at the time of the effective date of this section.

B. General Principles of Statutory Construction

Subsection (a) of Conn. Gen. Stat. § 1-1, *Words and phrases. Construction of statutes*, provides as follows:

In the construction of statutes, word and phrases shall be construed according to the commonly approved usage of the language; and technical words and phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly. Further, Conn. Gen. Stat. § 1-2z, *Plain meaning rule*, provides as follows:
The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.

Under Connecticut law, when a statute's language is clear and unmistakable, construction is prohibited and legislative intent is conclusively established by the statute's plain meaning. In re Majewski, 362 B.R. 67 (Bkrtcy.D.Conn.2007); See also Commissioner, Department of Public Safety v.

Freedom of Information Commission, et al, 204 Conn. 609, 620 (1987) (“When the language of a statute is plain and unambiguous, we need look no further for interpretive guidance, because it is assumed that the language itself reflects the legislative intent.”). In statutory construction, a “plain and unambiguous meaning” is the meaning that is so strongly indicated or suggested by the language as applied to the facts of the case, without consideration, however, of its purpose or the other, extratextual sources of meaning that, when the language is read as so applied, it appears to be the meaning and appears to preclude any other likely meaning. Lagueux v. Leonardi, 148 Conn. App. 234 (2014).

The analysis is different where the statutory language is ambiguous. “Where there is an ambiguity in the language used in a statute, however, we construe that statute in light of its legislative history, its language, the purpose it is meant to serve and the circumstances surrounding its enactment.” Jean T. Robinson v. Unemployment Security Board of Review, et al, 181 Conn. 1, 8 (1980), citing Board of Education of the Town of Manchester v. Connecticut State Board of Education, et al, 179 Conn. 694, 700 n.3 (1980); Martin Schwanschild v. Irene Binsse, et al., Administrators (Estate of Edward A. Binsse), 170 Conn. 212, 216 (1976).

C. Plain Meaning of Section 2-850 of the Hartford Municipal Code

The issue here is one of statutory construction. Specifically, in answering the question of whether Mr. Fitzpatrick meets the residency requirements of Section 2-850, it must first be determined if the ordinance is clear and unambiguous on its face, particularly with respect to the definition of *bona fide resident*. Here, if Mr. Fitzpatrick meets the definition of *bona fide resident*, then he would be deemed to be in compliance with the residency requirements of Section 2-850.

Section 2-850 requires that in order to continue with employment, Mayoral appointees must become *bona fide residents* within six months of appointment. The ordinance further defines what it means to be a *bona fide resident*, namely, that the employee must have a Hartford mailing address, the employee must be registered to vote in Hartford, and the employee must register any vehicles he/she

owns in the City. Although if the ordinance did not explicitly define *bona fide resident* it would be necessary to look beyond its explicit words for guidance on the meaning of this term, that is not necessary here. Specifically, Section 2-850 delineates the three requirements that must be met to qualify as a *bona fide resident*, and it can thus be said that the ordinance is clear and unambiguous on its face.³

Here, Mr. Fitzpatrick appears to meet the definition of *bona fide resident*. First, he has a Hartford mailing address at 22 Woodland Street.⁴ The information provided by Mr. Fitzpatrick further establishes that he has received mail at this address. Second, Mr. Fitzpatrick is registered to vote in the City of Hartford. Third, Mr. Fitzpatrick has registered two vehicles that he owns in the City of Hartford. The information provided by Mr. Fitzpatrick further establishes that he has paid car taxes on these vehicles.

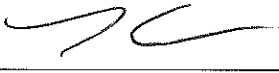
³ In fact, prior to ordinance revisions in 2011, *bona fide resident* was not defined at all in Section 2-850. Specifically, Subsection (A) of Section 2-850 provided, *All council appointees and unclassified employees employed by the City, shall maintain a continuous residence in the City during the period of such appointment or employments. This section shall not apply to new employees or appointees during the first six (6) months of such employment or appointment. If such individual ceases to be a bona fide resident of the City once the residency has been established and fails to become a bona fide resident within (6) six months of the appointment, the office or position of the individual shall thereupon become vacant, and such appointment or employment shall terminate.* There was thus some recognition that the ordinance did not clearly define what it meant to be a *bona fide resident*, and this required an ordinance revision in 2011 to its current form. If Mr. Fitzpatrick was asking the within question under the pre-2011 version of the ordinance, it would be necessary to include in this analysis outside evidence for an understanding of the term *bona fide resident*. By way of example, the court in Remington v. Aetna Cas. and Sur. Co., 1993 WL 190472 (May 28, 1993, Hadden, J.) (appellate court, at 35 Conn. App. 581 (1994), overturned the lower court's summary judgment decision holding that there was a question of fact as to whether decedent was a resident of plaintiff's household), engaged in such an analysis of outside evidence. In that case, the insurance policy in question stated, "The policy listed Virginia Remington as the named insured and defined covered persons to include her or "any family member." Family member was defined as "a person related to [Virginia Remington] by blood, marriage or adoption who is a resident of [Virginia Remington's] household. This includes a ward or foster child." The Policy did not define what constitutes residency. In determining what residency meant, the court reviewed the following factors: the intent of the individual; the frequency of contact between the individual and other household inhabitants; the frequency with which the individual spends time at the household; the maintenance of a separate residence for the individual; whether the individual is emotionally and financially capable of establishing and maintaining a residence independent of the household; the location of personal belongings; the location of and address used for personnel and business records; the address at which mail is received; and the address used for formal purposes such as voting, licenses, and income tax filings. In contrast, here, a review of such extraneous factors is not necessary because the language of Section 2-850, on its face, is clear and unambiguous.

⁴ The ordinance does not, for example, specify that the address must be of a single or multi-family home or an apartment building.

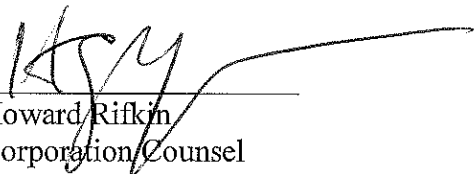
III. Conclusion

In order to comply with the residency requirements of Article XVIII, Section 2-850 of the Hartford Municipal Code, one must meet the definition of *bona fide resident*. Pursuant to Section 2-850, *bona fide resident* is defined as: (1) an employee who has a Hartford mailing address; (2) the employee is a registered Hartford voter; and (3) if the employee owns a motor vehicle, said motor vehicle must be registered in the City of Hartford. As detailed herein, the ordinance is clear and unmistakable in its definition of *bona fide resident*. Accordingly, and based on a review of the facts presented, Mr. Fitzpatrick meets the definition of *bona fide resident* and is thus in compliance with the residency requirements of Article XVIII, Section Pursuant to Section 2-850 of the Hartford Municipal Code.

By:



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cc: Mr. Sean Fitzpatrick
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Court of Common Council
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