

# Conflict of interest

Intriguing conflicts that clarify the concept



Thesis presented to obtain the degree of Master of Science in Public Administration



# Conflict of interest

Interesting conflicts that clarify the concept

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*Een beetje integer kan niet.*

Ien Dales



## Table of content

1. Introduction.....	4
1.1 Research question .....	4
1.2 Academic and societal relevance .....	6
1.3 Methodology .....	7
1.4 Outline .....	7
2. Theoretical framework.....	8
2.1 The academic literature .....	8
2.1.1 Integrity .....	8
2.1.2 Constituent parts of conflict of interest.....	9
2.2 Conflict of interest in Dutch administrative law.....	14
2.3 Working definition.....	15
3. Methodology .....	18
3.1 Small-N comparative design.....	18
3.1.1 Case selection.....	19
3.1.2 Selection of variables: focus points.....	20
3.2 Validity and reliability.....	20
4. Case descriptions and within-case analyses.....	22
4.1 Jos van Rey .....	22
4.1.1 Background and series of events.....	22
4.1.2 Allegations .....	23
4.1.3 Opinions concerning the conflict of interest.....	25
4.1.4 Analysis.....	29
4.2 Wim Oostveen.....	38
4.2.1 Background and series of events.....	38
4.2.2 Allegations .....	39
4.2.3 Opinions conflict of interest .....	40
4.2.4 Analysis.....	42
5. Between-case analysis.....	49
5.1 Interests.....	49
5.2 Conflict of interest.....	49
5.3 Mitigating circumstances .....	52

6. Discussion & conclusion .....	54
6.1 Theoretical implications .....	54
6.2 Answering the research question.....	56
6.3 Limitations and suggestions for further research .....	57
Literature.....	59



## 1. Introduction

In February 2018, the Dutch monthly magazine “Vrij Nederland” published its sixth edition of the Political Integrity Index (hereafter: PII) (De Koning, 2018). This index contains all the integrity violations in the public sector in the Netherlands of the previous year that caught the attention of the media. For the year 2017, the Index reported 39 violations. In the preceding years, these numbers were respectively 46 in 2016, 67 in 2015, 49 in 2014 and 64 in 2013. The researchers also examined integrity violations for the period from 1980 until 2013. For this period, they found 216 violations. In sum, the PII for the period 1980 until 2018 list a number of 481 integrity violations.

The PII is the product of collaboration between two professors and a journalist (Bart de Koning). The two professors – Leo Huberts and Muel Kaptein – are respectively professor in public administration and integrity. They define integrity violations as “violations of the prevailing moral values, norms and rules.” The violations that they distinguish are: corruption (bribery, favouritism); fraud or theft; dubious gifts; irreconcilable functions; misuse of powers; misuse of information; indecent and undesired treatment (in function); malfunctioning and waste; misconduct in the private sphere (De Koning, 2018). It is not always obvious whether a public official really violated a rule. The PII also assesses *possible* violations of integrity. De Koning, Huberts and Kaptein write that when the integrity of the person involved is questioned, this doesn’t automatically mean that he/she violated or infringed the rules. Thus, we can conclude that at least in some affairs of the PII it is questionable whether a violation of integrity is truly the case. In other words: there is a grey area where people differ in their opinion about the question whether a specific act actually constitutes an integrity violation.

### 1.1 Research question

While looking at the PII, several points stand out. From all types of integrity violations, it appears that conflict of interest elicits most discussions about the question whether a real violation is the case. Conflict of interest occurs when someone has opposing interests, that possibly leads to unfair favouring. The recurring pattern is as follows: the accuser states that the accused has several interests that are intertwined and the accused defends himself by saying that he never let the different interests influence each other. The question that rises, is how it can be proved that possible or apparent conflict of interest actually is real conflict of interest and that the interests indeed influenced each other? Often, only questioning one’s integrity is enough to cause changes: the accused resigns because his credibility is damaged, the accused is expelled or receives a warning and has to choose between his different activities. But still, the question whether actual conflict of interest is the case instead of

possible or apparent conflict of interest remains unanswered. This observation in the PII is widely supported in the academic literature about conflict of interest. Kernaghan and Langford (2014) state for example that “there is much disagreement and confusion about its [read: *conflict of interest*] meaning” and that it’s therefore important to define and explain the concept. Van den Heuvel et al. write that conflict of interest is less defined and obvious than other violations of interest, but that it is at least as important (Van den Heuvel, Huberts, Van der Wal & Steenbergen, 2010: 54). Huberts (2015: 17) observes that the relationship between moral rules and norms concerning integrity violations (like “avoid conflict of interest”) and the crystallization of those rules in concrete decisions and considerations, is ambiguous. He advocates the development of “moresprudence”, as a moral equivalent of jurisprudence. He uses conflict of interest as example and states that in order to find out how the rules concerning conflict of interest are translated in practise, investigation is needed on how those rules are applied and what moresprudence can be derived from that application (Huberts, 2015: 17). He mentions conflict of interest as one of the three integrity violations that are shrouded in mystery the most and that highly ask for more clarity and moresprudence, next to careful handling with public means and private conduct in relationship to the public position (Huberts, 2015: 21).

It isn’t only striking that many cases in the PII that leave room for discussion about the question whether we should speak of an integrity violation or not, concern cases of conflict of interest. It also stands out that most (alleged) violations that are listed in the PII take place on the local or regional level. Last year for instance, 32 of the 39 integrity violations in the PII occurred on these levels and only 7 on the national level (De Koning, 2018). This could entail that there is more uncertainty and less knowledge or insight on what is right and wrong on the local than on the national level. This idea is similar to the numbers that the Dutch bureau for the promotion of integrity in the public sector (Dutch: Bureau Integriteitsbevordering Openbare Sector, hereafter: BIOS) presented. BIOS offers a support service, where political functionaries can consult with dilemma’s that concern integrity (BIOS, 2016; BIOS, 2017; BIOS, 2018). The past three years, BIOS gave advise on respectively 76, 65 and 70 questions. Most of those questions originate from municipal functionaries. Also striking: most dilemma’s concern questions about conflict of interest (BIOS, 2016; BIOS, 2017; BIOS, 2018).

Taking in respect these two elements, the topic of this thesis emphasizes on conflict of interest in municipalities and more specifically: on diminishing the ambiguity that surrounds conflict of interest in municipalities. The central question of this thesis is: “What can we learn about the meaning of conflict of interest on the Dutch municipal level based on a comparative case study?”

In the following sections, I pay attention to the academic and societal relevance of this topic, address the research method and give an outline of the structure of this thesis.

## 1.2 Academic and societal relevance

Many politicians serve various interests. Next to their political function, they also have another job, they work as volunteer and are engaged in society. This applies especially to local public officials, since membership of the municipality council is not considered a full-time job (Nieuwsuur, 2017). One could view this diversity of occupations and a large network as an asset: the more a public official is connected with the people and the region he works for, the better he knows what is going on, which problems should be addressed and what the public wants.<sup>1</sup> However, when the interests of these functions and roles get intertwined, conflict of interest is lurking. A broad definition of conflict of interest is a situation in which a person that fulfils multiple roles, sometimes serves opposing interests (Van Dale, n.d.). BIOS mentions three negative consequences of conflict of interest. First, civil servants are not able to perform their job in a free and objective way. It becomes difficult to be in line with governmental core values like impartiality, reliability, diligence and servitude (BIOS, 2010: 12). Next, the government risks a situation in which it doesn't deliver the best quality/price of goods/services. This can even lead to dangerous situations for citizens, when defective goods are chosen. Third, the credibility of the government is at stake. When citizens have the idea that public officials can use their function for personal gain, they lose faith in the government (BIOS, 2010: 12).

These risks clarify why conflict of interest is considered a situation that should be avoided. As I mentioned before, in case of conflict of interest only questioning one's integrity is sufficient to result in resignation, expel or having to choose between the different activities. We should ask ourselves whether this outcome is justified. Only in case of real conflict of interest the line is crossed. Is it justified to give the same options when it only appears that conflict of interest is the matter? In order to prevent unnecessary rigorous decisions from being made, more clarity on the meaning of conflict of interest is needed. This is in line with the BIOS reports: the majority of the questions that they receive, relate to uncertainty about how to deal with multiple roles on the local level. The societal relevance of this study lies in diminishing that uncertainty and preventing unnecessary rigorous decisions from being made.

This study is even more relevant, because of the growing amount of tasks that Dutch municipalities are responsible for. During the last years, large decentralizations took place in The Netherlands (Veldhuisen & Snel, 2014: 24). As a consequent of these decentralizations, the amount of money that circulates on municipal level increased significantly. This forms a risk for integrity: "where money, information or influence can be found within the government, the interests and temptations (benefits) for immoral conduct are bigger. This makes the local government interesting for attempts of citizens, businesses, criminals and other parties to gain access or exert influence" (Veldhuisen &

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<sup>1</sup> I have chosen to write down the male variants of nouns only. However, everywhere where I write "his", I also mean "her" and the same applies to similar nouns.

Snel, 2014: 18). Conflict of interest – for example in the form of bribery – could be one of the results. In light of the decentralizations, this thesis has gained extra societal relevance.

This thesis is also academically relevant, because it contributes to conceptual clarification and the measurement of integrity. In the Theoretical Framework I pay attention to a categorization of conflict of interest made by Kernaghan and Langford. In the academic literature multiple definitions exist for conflict of interest as we will see in the theoretical framework. It would be useful to contribute to clarification of the concept. In the Theoretical Framework I will elaborate on the statements made here.

### 1.3 Methodology

The research aim is to come to a better understanding of conflict of interest on the Dutch local level. In order to reach this, I want to use rich, in-depth data that enables me to come across different views and opinions towards cases of conflict of interest. Therefore, I conduct a qualitative research. This takes the form of a small-N comparative case design. I will describe and analyse public texts and documents of two cases that are much discussed in light of the meaning and interpretation of conflict of interest on the municipal level. They concern the cases of Jos van Rey and Wim Oostveen. I will first describe and analyse the cases individually and will thereafter conduct a between-case analysis. Based on my findings, I make adjustments to the existing theory on conflict of interest and give an answer to my research question.

### 1.4 Outline

The remainder of this thesis is structured as follows. In the following chapter, I will review the academic literature about integrity, integrity violations and conflict of interest in particular. I also address Dutch Administrative Law concerning conflict of interest. I conclude this chapter with an overview of the types and elements of (conflict of) interest and with the presentation of a working definition of the concept. In the third chapter, I describe the research method. I have chosen for a qualitative type of research: a small-n comparative research. In this chapter I explain in detail why I chose this kind of research and how it is conducted. In Chapter 4 the two cases are described and analysed, after which the between-case analysis is presented in Chapter 5. In the final chapter, Chapter 6, I discuss the findings and address their theoretical implications. The research question is answered too. Finally, I discuss the limitations of my research and make suggestions for further research.

## 2. Theoretical framework

As I presented in the Introduction, the research question of this thesis is: “What can we learn about the meaning of conflict of interest on the Dutch municipal level based on a comparative case study?” To answer this question, I first construct a theoretical framework. This chapter explores what academic findings about conflict of interest also apply to and are relevant for Dutch municipalities. I also pay attention to what is written in Dutch administrative law, in order to come to an understanding of how conflict of interest formally is understood.

### 2.1 The academic literature

The emphasis of this paragraph lies on the academic literature about integrity violations and conflict of interest in particular.

#### 2.1.1 Integrity

The literal meaning of integrity is derived from the Latin word *integras*, which means “intact, whole, harmonious” (Six & Huberts, 2008: 66). This idea of integrity as wholeness can best be explained by three components: consistency, coherence and correspondence (BIOS, n.d.). It entails that integrity refers to a relationship between one’s expressions and behaviour at different times (consistency), at different places, in different roles and contexts (coherence) and between his outer, observable expressions and behaviour and inner thoughts and feelings and between his verbal expressions and his behaviour (correspondence) (BIOS, n.d.). An addition to this concept of integrity, is what Blenkert calls the *moral filter*: “integrity involves more than simply doing what one says; what one says and does must also pass through some moral filter” (Blenkert, 2004: 4). Apparently, also the content should comply with that what is considered good. Huberts (2015: 14) integrated different views on and aspects of integrity that circulate in the academic literature and distinguishes the following views on integrity.

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**Table 1: Views on integrity (Huberts, 2015: 14)**

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1. Integrity as wholeness
  2. Integrity as fitting element of the environment
  3. Integrity as professional responsibility
  4. Integrity as conscious moral reflecting and acting
  5. Integrity as value(s), including rectitude
  6. Integrity as accordance with (values in) law and regulation
  7. Integrity as accordance with applicable moral values and norms
  8. Integrity as exemplary moral conduct
- 

Huberts interprets integrity as the seventh view and defines integrity as characteristic or quality that refers to accordance with the relevant moral values and norms (Huberts, 2014). By using the term “relevant”, Huberts stresses the importance of the context in which certain values and norms are applicable (Huberts, 2014). According to him, integrity entails more than one value, like wholeness, legality or rectitude. On the other hand, professional responsibility and carrying out an exemplary role go beyond integrity and concern other themes as well. In this thesis, I will use the same definition as Huberts. In alignment with this view, I define a violation of integrity as acting against the relevant moral values and norms (Huberts, 2015: 15).

### 2.1.2 Constituent parts of conflict of interest

In the most used typology of violations of integrity, conflict of interest is considered one of the violations, next to – amongst others – fraud, theft and corruption (e.g. Huberts, Kaptein & Lasthuizen, 2007: 589; Huberts 2014; Huberts, 2015: 16; Lasthuizen, Huberts & Heres, 2011: 389; Van Zwieten & Verbeeck, 2012: 7). We should ask ourselves whether this view is correct. A broad explanation of conflict of interest is that a person that fulfils multiple roles, sometimes serves opposing interests (Van Dale, n.d.). For the public sector this can be paraphrased to a situation in which a politician or civil servant has other interests next to his public function that (possibly) are contrary to each other (Huberts, 2005: 15). Aren't fraud, corruption, misuse of information and waste and abuse of organizational resources all variants of conflict of interest, when it is described like that? In all these violations several interests are colliding, resulting in fraud, bribery or another infringement. Kernaghan and Langford elaborated on this idea and distinguished eight categories of conflict of interest: self-dealing, accepting benefits, influence peddling, using government property, using confidential information, outside employment, post-employment and personal conduct (Kernaghan & Langford, 2014). In Table 2, these categories are explained.

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**Table 2: Categories of conflict of interest (Kernaghan & Langford, 2014)<sup>2</sup>**

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1. Self-dealing	A situation in which one takes an action in an official capacity that involves dealing with oneself in a private capacity and that confers a benefit on oneself. An example is a public servant who awards a contract to a company that he or she owns.
2. Accepting benefits	Accepting or soliciting a benefit from someone with whom one does business as a public servant. The acceptance of benefits can take the form of bribery at the one extreme and the receipt of benefits of nominal value at the other. A wide range of benefits can be conferred on public servants, including gifts, meals, free travel, paid vacations, entertainment and money.
3. Influence peddling	The professional solicits benefits in exchange for using her influence to unfairly advance the interest of a particular party.
4. Using government property or resources	This variant ranges from stealing office supplies for home use to using software which is licensed to your employer for private work of your own.
5. Using confidential information	The use for personal or private purposes of a particular government property, namely confidential information.
6. Outside employment or moonlighting	This refers to the work or activity in which a person engages outside normal working hours for additional remuneration. Moonlighting needs restriction, when the activity is in direct competition with the employer, the employee's work is affected, the employer's property is being used to engage in the activity, confidential information is being used by the employee, the employee is using his/her position to solicit business or when the employee's activity could be perceived by the public to be a conflict of interest.

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<sup>2</sup> The descriptions of the categories are mostly direct citations from Kernaghan & Langford, 2014.

7. Post-employment	In this variant, a person who resigns from public or private employment goes into business in the same area. For example, a former public servant sets up a practice lobbying the former department in which she employed.
8. Personal conduct	Personal conduct may constitute a conflict of interest when a public servant's conduct makes him vulnerable to pressure to use his public office improperly (e.g. in case of a drug or gambling addiction) and when his conduct brings significant discredit to the government or to a particular department and thereby undermines public trust in public officials.

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Several characteristics recur in all categories. It becomes clear, that when speaking of conflict of interest, a distinction must be made between personal and business interests and financial and non-financial interests. In their publication, Kernaghan and Langford stress that also the difference between potential, apparent and real conflict of interest is important to understand, even as the scope of interests. These distinctions are also relevant for and applicable to the Dutch public sector. In a publication that the Dutch Bureau for the promotion of integrity in the public sector (Dutch: *Bureau Integriteitsbevordering Openbare Sector*, hereafter: *BIOS*) wrote for municipal functionaries, they mention the same aspects of (conflicts of) interests (BIOS, 2010: 10). In order to come to a clear understanding of what conflict of interest consists of and thus to be able to come to a comprehensive definition, I will expound on the four divisions that are made above.

First, a distinction must be made between personal and functional/business interests. In case of municipal councillors and the mayor and aldermen, business interests can be described as interests that are coherent with the public function and that relate to public interests (Addink, Van der Krabbe & Munneke, 2015: 15). The meaning of personal interest is more complex. The distinction between financial and non-financial interests becomes relevant here (BIOS, 2010: 10). Financial interests concern the (potential) gain or loss of money. This can appear in many forms: financial participation in enterprises, the possession of real estate or building plots, mortgages, debts, using government resources for personal purposes, spending time on a personal project during working hours et cetera. However, conflict of interest isn't necessarily related to financial considerations. Broadly speaking, "conflicts of interest extend to any interest, loyalty, concern, emotion or other feature tending to make the individual's judgement less reliable than it would normally be" (Bellamy, 2005: 39). Similar to financial conflict of interest, it concerns the favouring of a certain person or organization with whom a relationship exists, to the detriment of those with whom there is no such a relation (BIOS, 2010: 11).

The gain however, does not have a financial character, but is for example expressed in more status, the apparent ability to comply with expectations that the public functionary faces or sexual services.

While discussing personal versus functional and financial versus non-financial interests, the scope of interests needs to be discussed too. Personal interests can concern one's own interests, but the involvement of interests of others is also a possibility, like those of a partner, child, relative, friend or (current or former) business associate (Kernaghan & Langford, 2014). Accusations of conflict of interest have even been made to public functionaries that once lived in a specific area and that therefore were suspected to favour a certain community. On the other hand, there are also examples of codes of conduct that explicitly emphasize that matters that are of "general application" or matters to which a public functionary is related to as a member of "a broad class of the public", aren't part of the group of personal interests that might oppose to the interests of the public (Kernaghan & Langford, 2014). An example that Kernaghan and Langford give, is that when a public servant takes part in a government action to lower taxes for all citizens of the province while he/she is citizen of that province himself/herself, this isn't considered conflict of interest. I am following this line, because I think that when this would be considered a conflict of interest, we start doubting the credibility of the government too much and are able to find conflict of interest in any dossier. According to Slingerland (2012: 30) is conflict of interest mostly caused by non-financial personal interests. The public functionary uses his power or position to favour his family or friends.

Before turning to discussing the last distinction – that of potential, apparent and real conflict of interest – I want to elaborate on the differences between financial and non-financial interest a bit more. Two differences have already been mentioned – the presence or absence of a financial aspect and the possible involvement of interests of third parties in case of non-financial interests – but there are also two remaining differences. Financial interests can mutate quicker and are easier transferrable than non-financial interests and last, public functionaries are obliged to declare their financial interests, what doesn't apply to non-financial interests (BIOS, 2010: 25). Questionable for the latter is where the line for declaration needs to be drawn. Let's suppose that a public functionary owns a small number of shares of a company that might be affected by regulation that the functionary indirectly works on. Should he withdraw from the specific working activities and from the decision-making that concerns the regulation? In order to answer this question, the difference between potential, apparent and real conflict of interest needs to be explained. This is a distinction of which both Kernaghan and Langford and BIOS stress the importance, because it is closely related to the earnestness of the infringement.

Potential conflict of interest refers to a situation in which a public official has personal interests that in the future can result in conflicting interests, when he receives certain functional responsibilities (as the consequence of a change in function or an elaboration of tasks) (BIOS, 2010: 9). Apparent

conflict of interest entails that the personal interests of a public official appear to wrongfully influence his/her functioning, while this actually isn't proven (BIOS, 2010: 9). A justice of the Canadian Federal Court provided a test to find out whether apparent conflict of interest is the matter: "would an informed person, viewing the matter realistically and practically and having thought the matter through, think it more likely than not that the public servant, whether consciously or unconsciously, will be influenced in the performance of his [or her] official duties by considerations having to do with his [or her] private interests?" (Kernaghan & Langford, 2014). To the public, the appearance of conflict of interest can evoke feelings of mistrust what negatively influences the public opinion towards the government. This idea of "where smoke is, is fire" needs to be avoided. When apparent conflict of interest turns out to be truly present, we speak of real/actual conflict of interest. Here, the personal interests of a public official conflict with his functional interests (BIOS, 2010: 9).

At least real conflict of interest need to be avoided and combatted as can be derived from the above. The same seems to apply to apparent conflict of interest. Bovens however, mentions that the term "integrity" is overstretched when apparent conflict of interest is considered an integrity violation: "factually nothing is the matter" (Hoekstra, Karssing & Zweegers, 2010: 7). But even though the conflict of interest isn't proven, the appearance has a negative impact on the perceived professionalism of the government and moreover, that the conflict isn't proven doesn't mean that it doesn't exist. Therefore, I conclude that in most cases, apparent conflict of interest should be avoided. How is that for potential conflict of interest? Returning to the example of the public functionary with a small number of shares: should he declare this and take distance from the dossier? BIOS writes that in case of potential conflicts of interest and in case of low risks, registration of sideline activities and interests is sufficient and that no further actions are required (BIOS, 2010: 21). Thus, in this case, it would be enough to mention the sideline activities, but withdrawal is not requested. However, BIOS also states that one of the reasons for their publication, is to help the government acting quickly and effectively against (potential) conflict of interest (BIOS, 2010: 13). Apparently, declaring sideline activities is sufficient in the first place, but supervisors can always decide whether changes need to be made. Kernaghan and Langford (2014) write that "public servants are required to be as concerned with preventing apparent conflicts of interest as they are with preventing real and potential conflicts of interest". Deriving from the remarks made in both publications, I hold the opinion that preventing any form of conflict of interest – real, apparent or potential – is for the best of the government and the public. This implies for the case described earlier, that I would advise declaration of the shares and based on that information, a decision can be made whether the public functionary can continue working on the project or that adjustments need to be made.

Now, we know all about different types of (conflicts of) interests. However, we only discussed situations in which personal and functional interests are conflicting. But conflicts of interests can also

occur between personal or functional interests. The former isn't relevant for my thesis. In case of the latter, two variations are conceivable. First, a public official might have several tasks that have opposed interests. For instance, this applies to a public functionary that not only provides permits, but also controls them (BIOS, 2010: 11). This problem is more likely to occur in a smaller team, where not enough people are employed to separate the different tasks. The second variation of conflicting functional interests that can occur, is when a public functionary fulfils several roles because of his function. When a civil servant takes place in a monitoring body and consequently receives information that is related to his main function, he might use this information in an incorrect way (BIOS, 2010: 11). In my thesis, the emphasis lies on conflicts between personal and business interests, but in order to have a complete understanding of what conflict of interest entails and the forms it may take, it is useful to know that conflict of interests also occurs within the same kind of interests.

## 2.2 Conflict of interest in Dutch administrative law

Not only the academic literature provides sources on what is meant with conflict of interest. Legal sources do the same. Several Dutch laws and regulations are relevant when discussing conflict of interest on the Dutch local level. In this paragraph, I give insight in these laws and regulations. This helps us understand how the theory is embedded in practice.

Two Dutch laws are relevant when speaking of conflict of interest: the Municipality Law (in Dutch: Gemeentewet) and the General Administrative Law (in Dutch: Algemene Wet Bestuursrecht). The General Principles of Good Administration (in Dutch: Algemene Beginselen van Behoorlijk Bestuur) are also applicable and every municipality has a code of conduct, in which rules and regulations regarding conflict of interest are included. From the General Administrative Law, article 2:4 is of relevance. This article states (I) that the administrative body fulfils its task without prejudice and (II) that the administrative body guards against situations in which people that work for or belong to the administrative body and that have a personal interest in a certain outcome, influence the decision-making (Algemene Wet Bestuursrecht, art. 2.4). Based on the parliamentary discussions that took place in the realisation of this law, personal interest can here be explained as every interest that doesn't belong to the interests that the administrative body should safeguard arising from the tasks that he is responsible for (Raad van State, 2014). This can be explained as financial and non-financial interests and interests of the public functionary himself and those of someone that he is related to.

The Municipality Law contains several articles that are relevant to conflict of interest. Article 15 addresses various irreconcilable positions that a member of the municipal council cannot pursue. It states that a member of the municipal council cannot work for or against the municipality as advisor, lawyer or representative in case of a dispute. A municipal councillor also may not participate in an

agreement concerning labour, the sell or rent of movable goods and real estate that is related to the municipality (for a complete overview, see: Gemeentewet, art. 15). The Provincial Executive may waive exemption. Article 14 and article 41c address the oath that municipal councillors and aldermen take when they accept their function. They state that in order to be appointed and when doing or not doing something in their function, this did not and would not hold any connection with a gift, favour or promise given or taken (Gemeentewet, art. 14 & 41c).

To the General Principles of Good Administration belong the prohibition of misuse of powers and the principles of reasonableness, legal certainty, proportionality, due diligence and the principle to state reasons (Addink et al, 2015: 27). All of them are applicable to discussions concerning conflict of interest.

Finally, every municipality is obliged to have a code of conduct for the members of the council and for the mayor and aldermen (Gemeentewet, art. 15 & 41c). Many of these codes also include rules concerning conflict of interest. So, when discussing a case of conflict of interest, the code of conduct of the specific municipality needs to be taken into regard too. The fact that codes of conduct aren't binding, isn't of relevance for this thesis. The codes give us insight in how conflict of interest is interpreted in the two municipalities that we examine.

Deducing from the above, we can conclude that in Dutch administrative law several regulations are relevant when discussing conflict of interest. They are not very outspoken and leave room for discussion. In the case study, I will analyse how the law is interpreted in the two cases. But before turning to the empirical part of this thesis, I first want to aggregate the different aspects of conflict of interest.

### 2.3 Working definition

In the academic literature and the judicial documents we came across various aspects of conflict of interest. In this section, I give a recapitulation of these aspects and present a working definition. The completeness and relevance of the definition and aspects are tested in the case study.

A comprehensive definition of conflict of interest is that of Carson (1994: 338):

*“A conflict of interest exists in any situation in which an individual (I) has difficulty discharging the official (conventional/fiduciary) duties attaching to a position or office she holds because either (1) there is (or I believes that there is) an actual or potential conflict between her own personal interests and the interests of the party (P) to whom she owes those duties, or (2) I had a desire to promote (or thwart) the interests of (X) (where X is an entity which has interests)*

*and there is (or I believes that there is) an actual or potential conflict between promoting (or thwarting) X's interests and the interests of P."* (Carson, 1994: 338)

However, this definition is too long and complex. For a correct understanding of the concept, a more workable definition is needed. This can be found in the definition that BIOS (2010: 9) presented:

*"Conflict of interest concerns situations in which the public functionary has personal interests that are difficult to combine with the performance of his functional tasks and responsibilities and that influence them in a negative way".* (BIOS, 2010: 9).

In the interpretation of this definition, we need be aware of the following aspects. First, interests consists of different variations. These are presented in Table 3. We also need to be aware of the various types of conflicts of interests that can occur. These are listed in Table 4. As I mentioned earlier, I will test the completeness and relevance of the definition and its aspects in the case study.

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**Table 3: Types of interests**

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Functional interests	Interests that are coherent with the public function and that relate to public interests
Personal interests	Interests that are related to the public official as an individual
- Financial	Interests that are related to the (potential) gain or loss of money
- Non-financial	Interests that are related to one's status or position
➔ Personal	Interests that are related to one's status or position
➔ Favours of others	Nepotism, favouritism

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**Table 4: Appearances of conflict of interest**

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*Types of conflict of interest*

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Potential	A public official has personal interests that in the future can result in conflicting interests. Needs avoidance.
Apparent	The personal interests of a public official appear to wrongfully influence his/her functioning, while this actually isn't proven. Generally considered as a situation that needs avoidance.
Real	The personal interests of a public official conflict with his functional interests. Needs avoidance.

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*Categories of conflict of interest (Kernaghan & Langford, 2014)*

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1. Self-dealing	A situation in which one takes an action in an official capacity that involves dealing with oneself in a private capacity and that confers a benefit on oneself
2. Accepting benefits	Accepting or soliciting a benefit from someone with whom one does business as a public servant
3. Influence peddling	The professional solicits benefits in exchange for using her influence to unfairly advance the interest of a particular party.
4. Using government property or resources	This variant ranges from stealing office supplies for home use to using software which is licensed to your employer for private work of your own.
5. Using confidential information	The use for personal or private purposes of a particular government property, namely confidential information.
6. Outside employment or moonlighting	This refers to the work or activity in which a person engages outside normal working hours for additional remuneration.
7. Post-employment	In this variant, a person who resigns from public or private employment goes into business in the same area.
8. Personal conduct	Personal conduct may constitute a conflict of interest when a public servant's conduct makes him vulnerable to pressure to use his public office improperly and when his conduct brings significant discredit to the government or to a particular department and thereby undermines public trust in public officials.

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### 3. Methodology

In the Introduction, I explained the central aim of this thesis: clarification of the concept “conflict of interest” for the Dutch local government. “Clarification” can also be interpreted as “understanding” the concept. When choosing a research method, one needs to make a decision what kind of research suits the research question best: a quantitative method, a qualitative method or a combination of the two? Since I am not interested in finding causal relations or numerical evidence and because I am looking for more understanding instead, a qualitative research method fits the aim of this research best. This corresponds to the difference between positivism and interpretivism in research. For the social sciences, Bryman (2012: 28) explains the distinction as “a division between an emphasis on the *explanation* of human behaviour that is the chief ingredient of the positivist approach to the social sciences and the *understanding* of human behaviour”. The first is looking for “forces that are deemed to act” on human behaviour, the second tries to completely understand it. The nature of this thesis can be called qualitative and interpretative.

Qualitative research can take different forms. In this thesis, I collected and analysed all relevant publicly available texts and documents pertaining to two cases. This is also known as a small-N comparative design. In this chapter, I explain what this study looks like, why I chose this design, how I chose the cases and how the reliability and validity are warranted.

#### 3.1 Small-N comparative design

The goals of small-N comparative designs are twofold. First, the design is often used to generate or sharpen theories in an inductive way. Second, the researcher is mostly interested in completely understanding an event or situation that took place in the past (Toshkov, 2016: 258). Researchers often choose a small-N comparative design when they conduct inductive research. However, the research design of this thesis corresponds with a deductive form: I began with a theoretical framework and presented a working definition with an accompanying explanation of the constituent parts of that definition. Then, I conduct a case study, to test the definition and its accompanying explanation and to investigate whether it needs adjustments. Still, the main goal of this thesis seamlessly adhere to the goals of small-N comparative designs noted above. Even though we use and depart from existing theory and knowledge, we still try to sharpen the theory and most of all, we want to understand the concept conflict of interest.

A small-N comparative design enables the researcher to conduct both cross-case and within-case analysis. This is advantageous, because it diminishes the severity of the limitations of both types of analysis. I will elaborate on that below, but will first focus on the research design that I have chosen.

According to Toshkov (2016, 262), “the design of small-N comparative research primarily concerns the selection of cases to study and the selection of variables to observe”. I will follow this distinction and begin with explaining my choice for the cases and then will elaborate on the variables that I selected to describe and analyse the cases.

### 3.1.1 Case selection

The selection of cases can be based on one of the following two principles: working with cases that are very similar to each other (most similar system designs (MSS)) or with cases that differ in many ways from each other (most different system designs (MDS)) (Toshkov, 2016). However, both designs are used for research where a causal relationship exists or is expected and are therefore not that relevant for this thesis.

Another technique that can be used to select cases, is choosing them by their character. Bryman (2014: 70) presented a typology of cases for case research. The five types of cases are: the critical, extreme or unique, representative or typical, revelatory and longitudinal case. For this thesis, the approach of cases as critical or unique and extreme is relevant. A critical case is chosen for, when “the researcher has a well-developed theory and a case [...] will allow a better understanding of the circumstances in which the hypothesis will and will not hold” (Bryman, 2014: 70). When a case is considered extreme or unique, this means that the peculiarities of a case are so extraordinary and stand out so obviously that it is therefore interesting to examine. A representative case isn’t relevant for this thesis, because such a case wouldn’t help us find the boundaries of what is considered conflict of interest and what isn’t. A revelatory case is chosen for when it suddenly becomes possible to examine a phenomenon that couldn’t be studied before. For our research, this isn’t the matter. Finally, a longitudinal case may be chosen because two (or more) junctures in time can be investigated. However, this is possible in most case studies and can be viewed as a character of the four beforementioned types of cases.

While looking for cases that would help clarify the meaning of concept of interest in Dutch municipal government, criteria were that they were critical and extreme. They must have received much attention in the media, politics and public, so that many documents and files can be investigated that display differing points of view regarding the case and the meaning of conflict of interest. The cases also needed to be relatively recent, so that the outcomes will be useful for the current politicians and administrators. Another criterium in the case selection, was that the cases were finalised and that the conclusions were drawn. Otherwise, we still wouldn’t know how the people involved give meaning to the concept and what the decisive interpretation is.

Two cases that are mentioned in the Political Integrity Index and that meet these criteria are the case of Jos van Rey and that of Wim Oostveen. The case of the latter was finalised in March 2018. Van Rey's case is not completely finalised yet, because Van Rey lodged an appeal in cassation that still needs to take place. However, the Higher Court for cassation only controls whether the lower courts made mistakes in the judicial proceedings and does not make any statements regarding the content (De Rechtspraak, n.d.). Therefore, I didn't consider this a sufficient reason to exclude the case. Proceeding with the motivation for the selected cases: the cases have in common that they have a long history consisting of many developments, much attention and multiple investigations. Two other similarities are that both cases involve real estate and that both politicians are known as people that understood and knew the rules of the law and the political game by heart.

These elements made both cases unique and extreme and that is why I selected them for this thesis.

### 3.1.2 Selection of variables: focus points

While describing the cases, we need to have some points to focus on, in order to approach the cases on the same way and make the study more reliable. In the case descriptions, I will pay attention to the chronological developments of the affair, research reports, opinions of the people involved (the main characters, the people that would benefit from the conflict of interest, the political parties and the mayor and aldermen), what is written in the media and popularity of the main characters according to the public and in the council.

## 3.2 Validity and reliability

In general, the quality of research is measured by its validity and reliability (Bryman, 2014: 47). Validity can be explained as "the integrity of the conclusions that are generated from a piece of research" and can be divided in several types: measurement validity, internal validity, external validity and ecological validity (Bryman, 2014: 47).

In case studies, it seems to be difficult to safeguard measurement and external validity. Measurement validity concerns the degree to which a variable measures the concept that it is supposed to. In small-N studies, measurement errors cannot be compensated, because the number of studies is too small (Toshkov, 2016: 259). In this study however, the cases are chosen because they obviously are critical examples of the main concept of this thesis. Therefore, we don't have to worry about a lack of measurement validity.

Next, external validity concerns the degree to which findings can be generalized and are not only valid to the cases that were investigated (Bryman, 2014: 390). In case of large numbers of a

research unit (e.g. respondents), generalizability is easier to argue, because of the high amount of evidence. In line with this view, it is more difficult to generalize findings of a small-N study. This critique against small-N studies can be mitigated by stating that it is not the purpose of this study to generalize the findings (Bryman, 2014: 71). The purpose is to come to a better understanding of conflict of interest, not to find a causal relationship that applies to a larger population. Bryman (2014: 71) expresses this idea as follows: “the crucial question is not whether findings can be generalized to a wider universe but how well the researcher generates theory out of the findings”. For this thesis this implicates the question whether I succeed in sharpening the theory about the meaning of conflict of interest. Next to this, I also could have chosen to examine only one case. The fact that I thoroughly investigate two cases instead of one, makes that we dispose of more significant findings to analyse and therefore, that we can make stronger statements that can be further investigated in the future.

Reliability concerns the ability to repeat the study and have the same results (Bryman, 2014: 46). As is mentioned before, I use texts and documents as research material. This kind of study that is known as document analysis, carries the danger of not ensuring consistent results, because it is mainly build on the interpretations of the researcher. In order to enhance consistency of the case description and of the analysis, the focus points are used. Using these points, the same elements will receive attention systematically. In this study, attention will be paid to what is written in the media, what the conclusions of research rapports are, what is concluded by the court and what is expressed by the main characters and people from other political parties. This wide range of information enables me as researcher to develop an objective view to analyse the cases, as it will do with any researcher. This high amount of different sources strengthens the reliability of this study.

## 4. Case descriptions and within-case analyses

In this chapter, the cases of Jos Van Rey and Wim Oostveen are described and analysed. In both cases, the following sections are discussed: background and series of events, allegations and differing opinions concerning the conflict of interest. The cases conclude with a within-case analysis. In the next chapter, the between-case analysis is conducted.

### 4.1 Jos van Rey

Jos van Rey is a well-known politician. The past years, he was the subject of many articles of local and national newspapers and news programmes, several books about his life were published and a television series is being made (e.g. Nu.nl, 2017; Anti-corruptie, n.d.). This high amount of media attention is the result of his controversial behaviour in his role as politician and public manager. In this chapter I first describe his political career and the provocative events and developments that he is alleged to. Then, attention is paid to the opinions of the people involved concerning the conflict of interest (this also includes conclusions from research reports and media statements). The chapter ends with a within-case analysis: what can be derived from this case concerning conflict of interest?

#### 4.1.1 Background and series of events

Jos van Rey has a significant political career. He was born in 1945 in Roermond, a city in the southern part of the Netherlands. From 1974 until 1986 he was councillor for the Liberal Party (Dutch: VVD) in this city and between 1979 and 1982 he worked as alderman, in which position he was responsible for social welfare and education (Parlement & Politiek, n.d.). In 1982 he was elected as member of parliament (Van der Parre, 2016). He fulfilled this function until 1989, took a pause for two years, returned and stayed until 1998 (Parlement & Politiek, n.d.). In the meantime, he also served as municipal councillor in Roermond (1991-2002) and became member of the provincial states (1995-2011). In 1998, Van Rey was appointed alderman again in Roermond and this time he became responsible for – amongst other subjects – spatial planning, public housing, city management and the development of economic policy (Sorgdrager & Frissen, 2012: 15). He fulfilled this function until 2012. In 2011 and 2012 Van Rey worked several months in the senate (Dutch First Chamber). Since 2014, Van Rey is member of the Roermond municipal council and in 2015 he got elected for the provincial states as well (Parlement & Politiek, n.d.).

During the years, Van Rey was very popular in his city and was even called “the viceroy of Roermond” (NOS, 2016). Van Rey was the initiator and driving force of many real estate projects in the city, which boosted employment and improved the profile and reputation of Roermond significantly

(Van de Wier, 2013). He also came to be known as some sort of ombudsman, for always being willing to help citizens of Roermond solve the problems that they faced (Van de Wier, 2013). In 2011, times changed. In October that year, a local newspaper published an article in which Van Rey was suspected of conflict of interest. In his function as alderman, he took part in the decision-making concerning several projects that were related to his friend and project developer Piet van Pol (Sorgdrager & Frissen, 2012: 3). The municipality invested millions of euros in the projects of Van Pol (NOS, 2016), while simultaneously Van Rey got invited to Van Pol's holiday apartment in Saint Tropez, to soccer games and real estate fairs in several foreign cities (Van der Parre, 2016). Van Rey didn't see any harm in the activities with Van Pol and responded that he and Van Pol were "just friends" and that the municipality was aware of their friendship and excursions (Van der Parre, 2016). When Van Rey in 1998 was appointed as alderman, he agreed with the other aldermen and the mayor that he would inform them about activities that he undertook with Van Pol (Sorgdrager & Frissen, 2012: 6). The newspaper furthermore mentioned the real estate that Van Rey possessed in Roermond and the possible conflict of interest that that embodied (De Limburger, 2015).

This was the beginning of many investigations and trials. Because of the commotion that Van Rey caused, the Liberal Party on national level distanced itself from van Rey. Van Rey established a new party and took 15 members of the candidate list of the local Liberal Party with him (Van de Wier, 2013). In 2014, Van Rey participated in the elections with this new party and immediately became the biggest: they won 28,75% of the votes (Gemeente Roermond, 2014). However, because of the allegations Van Rey faced, no other party wanted to form a coalition with his party. In 2018, Van Rey was the lowest-placed name on the candidate list for the municipal elections, but many people had voted on him: in 2014 he received 3010 preferential votes, in 2018 this number was 2492 (Peeters, 2018). In comparison: the first candidate of Van Rey's party received almost half of the votes of Van Rey. Similar to what happened in 2014, his party became the biggest but not enough parties wanted to cooperate with it to form a coalition (Driessen, 2018). In 2016, the majority of the municipal council had revoked their trust in Van Rey because of the integrity investigations and asked him to leave (De Volkskrant, 2016). Van Rey decided to stay and to this day, he is member of the municipal council (Gemeente Roermond, 2018).

#### 4.1.2 Allegations

On the first of October 2011, local newspaper *De Limburger* published an article with the headline: "Conflict of interest Van Rey" (De Limburger, 2015). According to the article, the nature of the conflict of interest was twofold: Van Rey participated in the decision-making concerning projects (and therefore interests) that his project developer friend Piet van Pol was involved in and Van Rey owned

real estate in Roermond, which – according to the newspaper – implied that he couldn't be as independent as he was supposed to be as alderman. The paper presented 30 incidents that indicated the presence of (at least apparent) conflict of interest concerning the relationship between Van Rey and Van Pol. The incidents consist of holiday trips to – amongst others – Saint Tropez, Paris and Berlin, a trip to Bern for the European Soccer Championship and trips to real estate fairs in München, Cannes and Nice. During the time these trips took place, Van Pol was involved in almost every big real estate project in Roermond and furthermore, Van Rey possessed 19 real estate objects in the city (De Limburger, 2015). Van Rey, Van Pol, the mayor and other aldermen didn't respond to the real estate that Van Rey owned, but all declared that the friendship between Van Rey and Van Pol was known within the municipality, that they were very transparent about it and that there existed a difference between their friendly and business activities (Limburger, 2015).

Nevertheless, a few days after the publication of the article, the mayor of Roermond decided that the integrity of Van Rey needed to be investigated by a commission (RTLnieuws, 2014). Sorgdrager and Frissen investigated several major real estate projects of which conflict of interest could be expected. The conclusion of the commission was that no real conflict of interest had taken place, but that only could be spoken of apparent conflict of interest (Sorgdrager & Frissen, 2012: 46). Regarding the real estate that Van Rey possessed and a share that he bought in a shopping centre in Roermond, they concluded that real conflict of interest was the case, but that there was nothing that he could be reproached for, because he didn't deal with his possessions (Sorgdrager & Frissen, 2012: 19).

After the publication of the rapport, the municipal council decided that Van Rey could keep his position as alderman. In the summer of 2012, the Public Prosecution Department secretly started an investigation to Van Rey. During a phone tap, they overheard that Van Rey leaked information concerning the application process of a new mayor (Anti-corruptie, n.d.). Consequently, the National Investigation Department raided the houses of Van Rey and his children, even as his work chamber at the municipality. Quickly hereafter, Van Rey resigned as alderman and member of the senate (Anti-corruptie, n.d.). The Public Prosecution Department summoned Van Rey in 2015 for several violations of the law. The following crimes that he was suspected of, are relevant for this study (Anti-corruptie, n.d.):

- Accepting gifts of several companies, in the form of paid visits to real estate fairs in Cannes and München (seven times in total), soccer games including overnight stay, 22 trips to the villa of Van Pol at Saint Tropez and several city trips. In return, Van Rey would have given these companies a preferential treatment and classified information and he would have influenced decision-making processes in their favour. Especially Van Pol benefitted from these preferences.

- Violating professional confidentiality, by leaking information about the application process of a new mayor to four politicians of the Liberal Party.

#### 4.1.3 Opinions concerning the conflict of interest

In this section, I first discuss the conclusions of the commission Sorgdrager and Frissen in more detail. Then, I elaborate on the rulings of the Court of Rotterdam and the Higher Court of The Hague. Statements made by the people and institutions involved, are also constantly presented.

In March 2012, Sorgdrager and Frissen presented their findings in a rapport. They investigated several major projects that were appointed by the newspaper as dubious (Sorgdrager & Frissen, 2012: 5). The projects were evaluated and assessed by a framework that consisted of the Municipality Act, the General Administration Act, the code of conduct for councillors and the board of mayor and aldermen in Roermond and the prevailing procurement law and policy (Sorgdrager & Frissen, 2012: 6). The commission stated that in the cases in which Van Pol was involved, apparent conflict of interest was the matter. Regarding the real estate that Van Rey owned, the commission spoke of real conflict of interest. I briefly describe the cases and will make some critical remarks.

In the first case, the board of mayor and aldermen didn't follow the municipal policy concerning the selection of a project developer and immediately chose for the company of Van Pol (Sorgdrager & Frissen, 2012: 24). Van Rey was head of the committee that planned and prepared the decision-making and therefore, the commission found it hard to believe that Van Rey did not have any influence on it (Sorgdrager & Frissen, 2012: 39). Following the municipal code of conduct, Van Rey should have abstained from the dossier completely, because of his friendship with Van Pol. The researchers doubted whether Van Rey was independent in this case and therefore considered the state of apparent conflict of interest legit.

In the second case, a real estate assignment was given to the company of Van Pol without a tender procedure and again, Van Rey chaired the meetings about the planning and preparation of the project (Sorgdrager & Frissen, 2012: 34). Because of the absence of the tender procedure, the commission found the complete board of mayor and aldermen guilty for not trying to prevent the appearance of conflict of interest (Sorgdrager & Frissen, 2012: 40).

The third case concerned the new location for the municipal contact centre. The board of mayor and aldermen promoted a location that was against the advice of the municipal administration. The price was too high and the building didn't suit the functions (Sorgdrager & Frissen, 2012: 36). All opposition parties voted against the proposal, but it still was adopted. The company of Van Pol was the owner of the location. Again, the commission doubted Van Rey's objectivity and independency and spoke of apparent conflict of interest (Sorgdrager & Frissen, 2012: 41).

The cases in which Van Rey and Van Pol are both involved, are cases of apparent and not real conflict of interest, according to the commission. Real conflict of interest can be found in the real estate that Van Rey owned and in the share that Van Rey bought of a new shopping centre (a centre of which Van Rey was responsible for the arrival) (Sorgdrager & Frissen, 2012: 46). Both cases are not considered to be severe violations though. When Van Rey bought a share of the new shopping centre, he did this to prove to the outside world that he had faith in the new centre. Profit would not have been his motivation. The same applies to his real estate, because he doesn't sell it or trades with it (Sorgdrager & Frissen, 2012: 47).

The researchers concluded that there was no actual conflict of interest in the relationship between Van Rey and Van Pol. However, the appearance of conflict of interest had been evident for many years. To others, this had led to the opinion that Van Pol benefited from his friendship with Van Rey and that therefore could not be spoken of a fair competition. The commission thought that the apparent conflict of interest was manifested most clearly in the jointly visitations of real estate fairs (Sorgdrager & Frissen, 2012: 46).

Mayor Van Beers and Van Rey reacted enthusiastic to the rapport and stated that only a few small adjustments should be made, but that there were no major problems (De Graaf, 2012). Not everyone reacted this easy. Leo Huberts, Professor in Public Administration, expressed that many decisions that a municipality takes, can increase or decrease the value of real estate and that he considered it almost impossible for Van Rey to make impartial and independent decisions while having so many interests himself (De Limburger, 2015). A municipal councillor from one of the opposition parties said that he had counted 19 "yellow cards". Van Rey responded that he had counted 40 "goals", referring to the boosts that he had given to Roermond (De Graaf, 2012). The opposition parties tabled a motion that asked for a change in portfolios of the aldermen, so that Van Rey wouldn't be responsible for city management and spatial planning anymore. This motion was rejected, even as a motion of censure that the opposition parties then tabled against the complete board of mayor and aldermen (NRC, 2012). A councillor of the Liberal Party reacted to these developments: "Most building projects went to Piet van P., that was widely known in the municipality. The people didn't see any harm in it. In Limburg this is called networking." The suspicion of conflict of interest, didn't diminish Van Rey's popularity in the city. A citizen stated for example: "to what extent can corruption be proven? Ah, everyone does something in their life" (Van de Wier, 2013).

I would like to return to the statement that only apparent conflict of interest was the matter. In the Theoretical Framework, apparent conflict of interest was explained as a situation in which the personal interests of a public official appear to wrongfully influence his/her functioning, while this actually isn't proven. At least the label of apparent conflict of interest seems to be fitting in the cases described above, but we should ask ourselves whether we actually aren't dealing with real conflict of

interest. Wasn't Van Rey influenced by his friendship with Van Pol? The reasons that the board of mayor and aldermen gave to support their choice for the company of Van Pol in each case, were weak and arbitrary. Wasn't Van Rey actually bribed by Van Pol, by all the holiday trips and other excursions that Van Pol gave to Van Rey? Sorgdrager and Frissen concluded that the holidays and trips were activities made by friends, but in a later stage it turned out that Van Rey and Van Pol discussed business on their trips to Saint Tropez. Every time that Van Rey returned from Saint Tropez, civil servants needed to work on something that was discussed during their vacation (Gerechtshof Den Haag, 2017). This evidence points to the existence of real conflict of interest and that is also what the Higher Court of The Hague decided in 2017. In an earlier lawsuit in 2016, the Court of Rotterdam decided differently. That court ruled that the holiday trips to Saint Tropez were purely friendly, because both Van Rey and Van Pol took their families and paid alternately (Rechtbank Rotterdam, 2016).

For the trips to real estate fairs, the Court of Rotterdam did rule that bribery took place. Van Pol invited Van Rey to these fairs and paid most of the costs. They both declared that they visited the fairs in their functions as alderman and project developer (Rechtbank Rotterdam, 2016). Moreover, Van Rey always discussed the fairs as business with his fellow aldermen and the mayor. No facts or circumstances could be thought of to speak of a trip made by friends. The external appearance of the trips led to the determination that Van Pol had the intention to bribe Van Rey and that Van Rey knew that he was being bribed (Rechtbank Rotterdam, 2016). The same applied to the soccer games that Van Pol took Van Rey to.

Altogether, the Court of Rotterdam stated that Van Rey accepted gifts from project developers that he worked with in his function of alderman and specifically from Van Pol. Because of his extensive experience in the public sector and his knowledge about the rules, he must have known that people were trying to influence and bribe him. According to the court, he should have kept distance from the people that he worked with, but he didn't. Therefore, the court was of opinion that Van Rey had not acted like an honest and incorruptible politician (Rechtbank Rotterdam, 2016). However, Van Rey didn't receive large sums of money: the bribery consisted of the trips to several real estate fairs and the visitations of soccer games. Moreover, it didn't seem that Van Pol profited largely from the gifts he made to Van Rey. The court was therefore not able to speak of anything more severe than apparent conflict of interest and apparent nepotism (Rechtbank Rotterdam, 2016). The Court of Rotterdam also discussed the leaking of confidential information concerning the appointment of a new mayor to candidates of the Liberal Party (Rechtbank Rotterdam, 2016). The Public Prosecution Department argued that the motives of Van Rey were twofold. First, he aimed on the appointment of someone from his own party. And second, he tried to strengthen his own position, because the new mayor would owe Van Rey. The Court ruled however, that there was no evidence for this assumption and thus, that

Van Rey wasn't guilty of bribery on this point. They did find Van Rey guilty of violating the duty of confidentiality.

In the penal provision of the Court of Rotterdam, it was taken into account that Van Rey had stepped down as alderman and member of the senate and that the past years had been tough, because of the many investigations and allegations. Therefore, the court only gave him a penalty that consisted of 240 hours community service (Rechtbank Rotterdam).

As a result of this verdict, the municipal council inserted an extra meeting of which the (apparent) conflict of interest of Van Rey was the subject. During that time, Van Rey wasn't alderman anymore, but held the office of municipal councillor. His party (LVR) was the only party opposition party, the other seven parties were united in the coalition. The coalition parties commonly made a statement about the situation. In this statement, several references were made to the municipal code of conduct that Van Rey had violated. The conclusion of the coalition parties, was that Van Rey broke the rules of actively and autonomously avoiding the (appearance) of conflict of interest and bribery. He didn't keep to the code of conduct for a long period of time. The coalition parties asked Van Rey to lay down his function, because he had ignored the code of conduct so convincingly and therefore couldn't be trusted in the council (Gemeente Roermond, 2016). Van Rey responded that he always had tried to be transparent, but that he should have been even more open. He said that he wouldn't lay down his office, because he wanted to dedicate himself to the well-being of Roermond and its citizens, as always had done (Gemeente Roermond, 2016). At the end of the meeting, Van Rey still was municipal councillor.

Van Rey and the Public Prosecution Department both appealed against the verdict of the Court of Rotterdam (Marijnissen, 2017). In November 2017, the Higher Court of The Hague revealed their verdict. They turned out to be sterner than the Court of Rotterdam. Where the Court of Rotterdam stated that some gifts that Van Pol made to Van Rey were part of their friendly relationship, the Higher Court decided that Van Rey should have known that he represented the office of alderman 24/7. They stated that when Van Rey became alderman, he should have questioned if it would be wise to become alderman of spatial planning while also being close friends with an important project developer in the same city (Marijnissen, 2017). Based on the agreements that were made concerning the openness of the contact between Van Rey and Van Pol and the fact that Van Rey partially paid Van Pol back for the trips and events (these amounts didn't equal the money Van Pol spent on Van Rey), the Higher Court concluded that Van Rey was aware of the interests that Van Pol had in his contact with Van Rey. Then, other than the Court of Rotterdam had stated, the Higher Court of The Hague also ruled that the holiday trips to Saint Tropez were attempts of Van Pol to influence Van Rey. As I already mentioned before, the fact that these gifts were made in the private sphere, did not exclude that Van Pol had the intention to bribe Van Rey and that the Van Rey was willing to be bribed. This claim was supported by

the fact that Van Rey and Van Pol also discussed business on their holiday trips (Gerechtshof Den Haag, 2017). As a conclusion, the Higher Court found Van Rey guilty for accepting gifts in the form of visits to Saint Tropez, real estate fairs, soccer games and city trips and for asking money for the company of his children and campaigning. According to the Higher Court, Van Rey had not been able to keep a clear separation between personal and business interests. The Higher Court ruled the same as the Court of Rotterdam when it came to the leaking of confidential information. The sentence that Van Rey got, was twofold. First, he got imposed a suspended sentence of 12 months with a probationary period of 2 years. This sentence was given because of the character and the severity of the proven misconduct. Second, the Higher Court took the right of Van Rey to fulfil a public office on municipal, provincial or national level for a period of 2 years. This sentence was given, because Van Rey didn't seem to acknowledge and understand his wrongdoing. The Higher Court intended to protect the integrity of the public sector by keeping Van Rey away from it (Gerechtshof Den Haag, 2017). In the penalty clause, the Higher Court took in account mitigating circumstances. These concerned the fact that neither Van Rey or Van Pol profited largely from the conflict of interest, that the chance on a repeated violation was unlikely (because of the age of Van Rey, his clean criminal record and the publicity) and the offers that he already had made (resignation of several offices and the bearing of extensive media attention).

Again, Van Rey didn't agree with the decision of the court and lodged an appeal in cassation. The outcomes thereof, are yet unknown.

#### 4.1.4 Analysis

In this section, I will analyse the statements, circumstances and developments that are related to three violations that Van Rey was accused of and that were connected with conflict of interest. The first concerns the acceptance of gifts in the form of paid visits to real estate fairs, holiday trips and soccer games. In return, Van Rey would have given these companies a preferential treatment and classified information and he would have influenced decision-making processes in their favour. Especially Van Pol would have benefitted from these preferences. Next, Van Rey possessed real estate in Roermond and bought a stock of a shopping centre in Roermond. These possessions were considered to influence his neutrality and objectivity that he is supposed to have as alderman. Last, Van Rey had leaked confidential information about the application process of the new mayor of Roermond. In this analysis, I first discuss the statements made by the relevant actors about their interpretation of conflict of interest. Then, I analyse the opinions of the same groups of actors concerning the allegations of conflict of interest in the case of Van Rey. Based on these findings, I pay attention to mitigating circumstances that influence the opinion-forming. I continue with a discussion of the presence of the categories of Kernaghan and Langford and I conclude this analysis with a summary of the findings.

#### 4.1.4.1 Generally defining conflict of interest

In the case description, I paid attention to the opinions of different groups of actors. These concern Sorgdrager & Frissen, the Court of Rotterdam, the Higher Court of The Hague, politicians in the municipality council and Van Rey. The actors all made general statements about the definition and their interpretation of conflict of interest. In Table 5, I present these statements.

**Table 5: Defining and interpreting conflict of interest**

	<b>Sorgdrager &amp; Frissen</b>	<b>Court of Rotterdam</b>	<b>Higher Court of The Hague</b>	<b>Politicians other parties</b>	<b>Van Rey</b>
<b>Aspects of conflict of interest</b>	<p>Not only factual COI needs to be prevented, but also the appearance. We speak of apparent COI when third parties have the opinion that the acting of the public functionary evokes the suggestion of COI. (p. 8)</p> <p>---</p> <p>COI doesn't necessarily result in benefit for the public of functionary or his family and friends. It is sufficient that the real possibility exists. Apparent COI is already the matter when outsiders might have the idea that a possibility of preferential treatment exists. (p. 8)</p> <p>---</p> <p>The code of conduct of</p>	<p>The codes of conduct of Roermond make clear that every appearance of COI must be avoided.</p> <p>---</p> <p>We don't have evidence for the strong impression that nepotism and COI is the case.</p> <p>However, this trial doesn't include the appearance of COI and therefore, this isn't included in the penalty clause.</p>	<p>Public functionaries need to be objective and independent. When personal and functional interests get intertwined too much, the trust in and the functioning of the public sector is at stake.</p> <p>---</p> <p>The office of alderman is one that is represented 24/7. When you become alderman, you are one until your resignation. It is therefore impossible to separate roles and interests.</p>	<p>Code of conduct Roermond 2016: A municipal councillor actively and autonomously prevents and combats (apparent) COI and corruption. Relevant are personal interests and interests of family and friends. In this cases, he doesn't vote, nor influences the decision-making. (Code of conduct Roermond,2016)</p> <p>---</p> <p>A core value of integrity is independency. This entails that there is no dilution with improper interests and every appearance of such dilution is avoided. (Code of conduct Roermond, 2016)</p>	<p>Maximal transparency isn't sufficient to avoid the appearance of COI. I strictly kept to the rules concerning my contact with Van Pol. To the municipality council and the citizens, these rules were unclear. That could have been better. (Van Rey in council meeting, 2016).</p>

	Roermond leaves no room for discussion: every appearance of COI must be prevented. Real COI is completely unacceptable. (p.46)			--- Nepotism and even the appearance of COI and corruption don't belong in the public sector. (Council meeting Roermond, 2016)	
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Recurring in all statements is that both real and apparent conflict of interest need to be avoided. Transparency alone isn't sufficient to avoid allegations, but evidence is needed to support the suspicions and to be able to penalise it. We can also conclude that relevant interests are understood as the personal interests and the interests of family and friends. Furthermore, the office of alderman is interpreted as an office that is represented constantly: one cannot lay down that role for a specific amount of time. When you are alderman, you are one until you resign. In the next section, I analyse the opinions of the same groups of actors concerning the three allegations of conflict of interest.

#### 4.1.4.2 Assessments of the allegations of conflict of interest in the case of Van Rey

Regarding conflict of interest, Van Rey was accused of three violations. In Table 6, I represent the opinions of the different actors about the occurrence of conflict of interest.

**Table 6: Opinions of actors involved about conflict of interest in case of Van Rey**

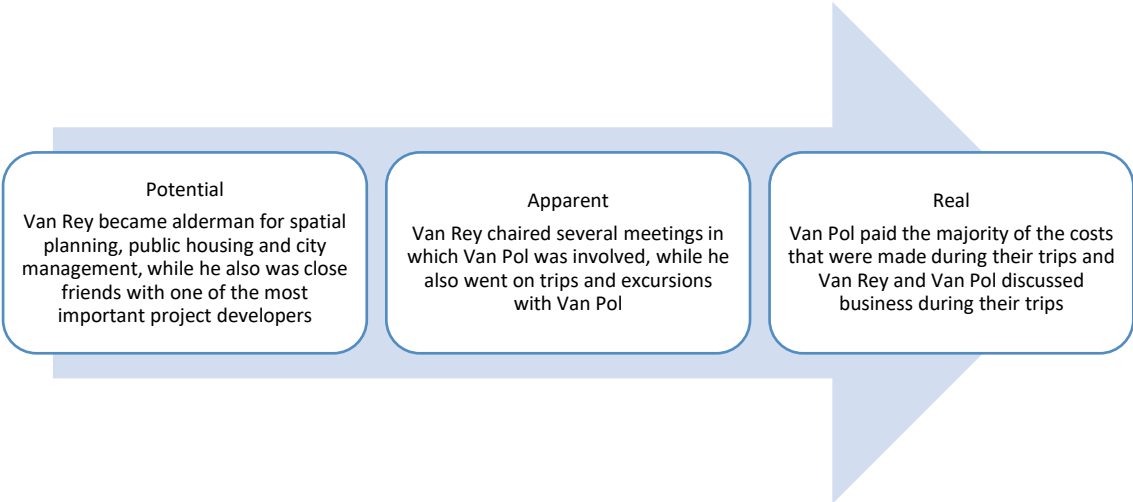
Allegation	Opinion Sorgdrager & Frissen	Opinion Court of Rotterdam	Opinion Higher Court of The Hague	Opinion politicians other parties
<b>Preferential treatment of Van Pol in return for trips and excursions</b>	Apparent conflict of interest. The commission doubted Van Rey's objectivity and independency, but couldn't prove that real influencing took place.	Holiday trips: apparent conflict of interest. Van Rey and Van Pol took their families and paid alternately. Real estate fairs & soccer games: real conflict of interest. Business was discussed and Van Pol paid these trips.	Holiday trips: real conflict of interest. Business was discussed and Van Pol paid significantly more than Van Rey. Real estate fairs & soccer games: real conflict of interest. Business was discussed and Van Pol paid the trips.	Followed the statements of respectively Sorgdrager & Frissen and the two courts. They condemned the violations of the municipal code of conduct and judged him for doing that.
<b>Bribery by leaking information</b>	No judgement.	No bribery: the allegations of the	No bribery: the allegations of the	No judgement about the

		Public Prosecution Department were based on ungrounded hypotheses. It seems to be apparent conflict of interest though. It is considered as leaking confidential information.	Public Prosecution Department were based on ungrounded hypotheses. It is considered as leaking confidential information.	allegation of bribery. The coalition parties condemned the violation of rule of confidentiality.
<b>Possession of real estate and purchase of a stock</b>	Real conflict of interest: Van Rey was in the position to influence the value of these personal possessions.	No judgement.	No judgement.	Van Rey didn't abide by the municipal code of conduct: the (appearance) of conflict of interest wasn't avoided and that blameworthy.

Van Rey's personal interests that are at stake, are both financial and non-financial. The financial interests consist of the trips and excursions that Van Pol took him to and the real estate and share that van Rey owned. The non-financial interests concern the favouring of his friend Piet van Pol and the unproven favouring of his party and strengthening of his position within his party and the municipality.

In this case, we come across all three types of conflict of interest. Potential conflict of interest occurred when Van Rey became alderman for spatial planning, public housing and city management, while he also was close friends with one of the most important project developers of Roermond, Piet van Pol. Based on the agreements made by Van Rey and the mayor and other aldermen, we can conclude that the risk was known within the municipality. Van Rey wasn't allowed to participate in the decision-making in projects in which Van Pol was involved and Van Rey had to inform the mayor and aldermen when he and Van Pol met for personal affairs. Apparent conflict of interest took place in form of the chairing by Van Rey in projects in which Van Pol also was involved and in the trips that they took. Based on the information that Van Rey and Van Pol discussed business during their trips, that Van Pol paid the major part of the costs and on the assumption that Van Rey should have understood that Van Pol would try to bribe him, the Higher Court of The Hague ruled that their trips actually were cases of real conflict of interest. Sorgdrager & Frissen and the Court of Rotterdam didn't have that information and were therefore only able to speak of apparent conflict of interest. The development from potential to real conflict of interest, is visualized in Figure 1.

**Figure 1: From potential to real conflict of interest in the case of Van Rey**



The Higher Court of The Hague also stated that the office of alderman is one that is represented 24/7 and that aldermen therefore constantly should be aware of being the target of influence. We can also conclude that leaking confidential information is not only considered a crime because the rule of confidentiality is violated. It also might entail bribery: the provider of information gains power, because the receiver owes him something. Moreover, we saw that the action could be used for partisan win and that that also is considered a form of conflict of interest. In the case of Van Rey, the leaking didn't result in these conclusions, because there was no evidence. We should however be aware of the possibility and relatedness of conflict of interest and the leaking of information. Real conflict of interest was present in case of the real estate that Van Rey possessed and the stock that he bought of a shopping centre in Roermond. However, mitigating circumstances influenced the opinion-forming about this allegation. I will expound on this in the next section.

*4.1.4.3 Mitigating circumstances*

The context in which conflict of interest (whether it is potential, apparent or real) occurs, influences the judgement of the severity of the violation. Van Rey didn't intent to profit from the real estate that he possessed and the stock that he bought. This can be derived from his actions. Van Rey didn't deal in real estate while he was alderman and the purchase of the stock was symbolic (besides: he also didn't know whether the centre would become a success and thus if he would benefit from it). So even though the conflict of interest in these two cases are real, they are not considered severe because of the context. Observing the rulings of the courts, we notice that other circumstances had mitigating effects too. These circumstances are presented in Table 7.

**Table 7: Circumstances with a mitigating influence on the judgement of the severity of the violation**

	<b>Opinion Sorgdrager &amp; Frissen</b>	<b>Opinion Court of Rotterdam</b>	<b>Opinion Higher Court of The Hague</b>	<b>Opinion politicians other parties</b>	<b>Opinion proponents of Van Rey (citizens, fellow party members)</b>
<b>Mitigating circumstances</b>	<p>In case of the real estate: he didn't sell his property, nor buy new property. Profit would not have been his motivation ---</p> <p>In case of the stock of the shopping centre: he bought it to prove to the outside world that he had faith in the new centre. Profit would not have been his motivation</p>	<p>Van Rey didn't receive large sums of money ---</p> <p>Van Pol didn't profit largely from the gifts that he gave to Van Rey ---</p> <p>Van Rey resigned as alderman and member of the senate as a consequence of the allegations ---</p> <p>The investigations, the trial and the media attention had impact on the life of Van Rey ---</p> <p>His age, clean criminal record and the continuing attention made that Van Rey probably wouldn't make the same mistakes again</p>	<p>Van Rey didn't profit largely from his actions ---</p> <p>Van Pol didn't profit largely from the gifts that he gave to Van Rey ---</p> <p>Van Rey resigned as alderman and member of the senate as a consequence of the allegations ---</p> <p>The media attention had impact on the life of Van Rey ---</p> <p>He had a clean criminal record and a considerable age ---</p> <p>Van Rey meant a lot for the economic development of Roermond</p>	-	<p>Van Rey achieved much for Roermond ---</p> <p>In Limburg this was called networking, not corruption</p>

Apparently, the severity of conflict of interest is influenced by the height of the profits and in the penalty clause is room for personal circumstances that might mitigate the penalty.

#### 4.1.4.4 Categorization of Kernaghan and Langford

The last distinction in conflict of interest that I discuss, is related to the categories that Kernaghan and Langford presented. In Table 8, I show which categories are present in the case of Van Rey and how these categories took form.

**Table 8: Categories of conflict of interest in the case of Van Rey**

Categories	Description	Van Rey
<b>1. Self-dealing</b>	A situation in which one takes an action in an official capacity that involves dealing with oneself in a private capacity and that confers a benefit on oneself. An example is a public servant who awards a contract to a company that he or she owns.	Van Rey bought a stock of a shopping centre and possessed real-estate in Roermond, while he was also responsible for economic growth of his city.
<b>2. Accepting benefits</b>	Accepting or soliciting a benefit from someone with whom one does business as a public servant. The acceptance of benefits can take the form of bribery at the one extreme and the receipt of benefits of nominal value at the other. A wide range of benefits can be conferred on public servants, including gifts, meals, free travel, paid vacations, entertainment and money.	Van Rey accepted benefits in the form of trips and excursions, from a project developer he worked with.
<b>3. Influence peddling</b>	The professional solicits benefits in exchange for using her influence to unfairly advance the interest of a particular party.	(Van Rey leaked information to candidates for the position of mayor, that were from the same party as he was. He might have favoured his party and strengthened his own position. However, this is not proven and Van Rey is absolved of these allegations.)
<b>4. Using government property or resources</b>	This variant ranges from stealing office supplies for home use to using software which is licensed to your employer for private work of your own.	Not applicable.
<b>5. Using confidential information</b>	The use for personal or private purposes of a particular government property, namely confidential information.	(Van Rey leaked information to candidates for the position of mayor, that were from the same party as he was. He might have favoured his party and strengthened his own position. However, this is not proven and

		Van Rey is absolved of these allegations.)
<b>6. Outside employment or moonlighting</b>	This refers to the work or activity in which a person engages outside normal working hours for additional remuneration. Moonlighting needs restriction, when the activity is in direct competition with the employer, the employee's work is affected, the employer's property is being used to engage in the activity, confidential information is being used by the employee, the employee is using his/her position to solicit business or when the employee's activity could be perceived by the public to be a conflict of interest.	Not applicable.
<b>7. Post-employment</b>	In this variant, a person who resigns from public or private employment goes into business in the same area. For example, a former public servant sets up a practice lobbying the former department in which she employed.	Not applicable.
<b>8. Personal conduct</b>	Personal conduct may constitute a conflict of interest when a public servant's conduct makes him vulnerable to pressure to use his public office improperly (e.g. in case of a drug or gambling addiction) and when his conduct brings significant discredit to the government or to a particular department and thereby undermines public trust in public officials.	Not applicable.

In this case, only the category of accepting benefits is proven and judged as violation. Using confidential information for influence peddling wasn't proven. These violations are distinguished from each other in the categorization of Kernaghan and Langford, but in the case of Van Rey they are related. Van Rey is condemned for breaking the rule of confidentiality, but that is something different than what is meant by using confidential information in this categorization.

*4.1.4.5 Summary*

The summary that we can make of this analysis, is the following. Van Rey is guilty of two categories of conflict of interest: self-dealing and accepting benefits. Contextual aspects influence the judgement.

Van Rey didn't intent to profit from the self-dealing and therefore, this is not considered a crime. So, intention or awareness are important factors in determining the severity of the violation. He did profit from the gifts that he accepted, for which in return he discussed business with the giver of the presents. However, the degree of benefit on both sides was modest. This influenced the penalty clause. Therefore we need to add the value of profit as a factor that influences the determination of the severity of the violation, next to the presence of intention and awareness. The personal interests of Van Rey were both financial and non-financial in nature: respectively the trips/excursions and his friendship with Van Pol. Non-financial interests of which the existence weren't proven, concerned partisan gain and strengthening of the own position. In this case, ungrounded allegations weren't sufficient to receive the label apparent conflict of interest. Apparently, in order to speak of apparent conflict of interest, the circumstances that point to conflict of interest – while unproven – need to be stronger and more convincing than merely hypothetical, far-fetched statements. We also observed that the categories influence peddling and using confidential information were narrowly related. Finally, we can conclude that the office of alderman is one that is represented constantly.

## 4.2 Wim Oostveen

Wim Oostveen was well-known in the city of Utrecht. First as real estate mogul in the area and later also as municipal councillor, Oostveen was deeply embedded in the developments of the city. Because of the influence he had in Utrecht, his fights with the municipal authorities and the conflict of interest he was accused of, Oostveen often appeared in the media and people had a strong opinion about him. In this chapter I first describe the events and developments that took place before he was accused of conflict of interest. Then, attention is paid to the opinions of the people involved (including research reports and media statements). Similar to the addressment of the case of Van Rey, this chapter ends with a within-case analysis.

### 4.2.1 Background and series of events

The interrelatedness between real estate mogul Wim Oostveen and the municipality of Utrecht originated from 1996. That year, Oostveen bought approximately 1,5 million square meters from farmers on the west side of Utrecht (Huisman, 2015). Simultaneously, the municipality was developing plans for a new city quarter in that area, named “Leidsche Rijn”. The 1,5 million square meters that Oostveen possessed, formed about seven percent of the total area that the municipality planned on building Leidsche Rijn. The municipality of Utrecht didn’t have a choice but to cooperate with the real estate company of Oostveen – Ovast – in order to be able to realize the area development and territorial planning the municipality had in mind for Leidsche Rijn (Boogers, 2016: 6).

Since then, Oostveen and the municipality had been in a constant state of conflict. Their latest argument concerned two aspects. First, the municipality demanded that Ovast constructed 500 houses in district “Het Zand” in Leidsche Rijn and that Ovast paid 2,4 million euro to the municipality for the lack of social housing. Oostveen refused to pay this sum, because in that case he would make a loss (Huisman, 2015). When Oostveen declared his position respecting Het Zand, the municipality paused the development of another district in Leidsche Rijn – “Rijnvliet” – where Ovast was eager to construct 800 houses. In July 2014, the court decided that Oostveen had to pay 5 million euros to the municipality for the lack of social housing and that the municipality had to pay 2,7 million euro to Ovast for not refusing to discuss Rijnvliet with Ovast anymore. Both Ovast and the municipality appealed these decisions (Huisman, 2015). On 13 March 2018, the Court of Appeal decided that this judicial statement was valid and that it would be made definite later in 2018 (Franck, 2018). However, two days before this statement was made public, Oostveen had died of the consequences of cancer.

Earlier, in March 2014, elections were held for the municipality council. Oostveen took part in this election. Together with former councillor of the Christen Democratic party (Dutch: CDA) Cees Bos,

Oostveen established the new local party “Stadsbelang Utrecht” (Huisman, 2015). In an interview, Bos declared that the Christian Democratic Party did not longer match with his ambitions and ideas. He did reach political consensus with Wim Oostveen, who had reached out to him with the idea of founding a new political party with Bos as its leader (Oosterbroek, 2014). Soon after that, the party “Stadsbelang Utrecht” was a fact. The campaign that they held resulted in the gain of two seats in the municipality council, that were filled by Cees Bos and Wim Oostveen (Huisman, 2015).

#### 4.2.2 Allegations

In his new position as municipal councillor, Oostveen now would be able to read confidential files and attend confidential meetings, amongst which documents and meetings concerning his own conflict with the municipality (Huisman, 2015). The risk of conflict of interest appeared to be very high, but this didn’t withhold the commission that investigated the credentials of the new municipal councillors from accepting the credentials of Oostveen (Boogers, 2016: 6). This was caused by the way in which the commission interpreted the law. Article 15 of the Dutch Municipality Law describes what is forbidden for municipal councillors. As we know from the Theoretical Framework, it states that councillors are forbidden to close business transactions with the municipality or to work for or against the municipality in the function of lawyer, advisor or trustee (Boogers, 2016: 7). In the strict sense, this didn’t concern Oostveen and therefore, the commission advised to welcome Oostveen to the municipality council. They also stated to have some reservations, because of the conflict of interest that might appear with certain subjects (Boogers, 2016: 7). Oostveen had the responsibility to make a clear distinction between his private interests as entrepreneur and his public function as councillor. Oostveen had several meetings with the mayor of Utrecht, Jan van Zanen, and the municipality’s registry to discuss how he should comply with this responsibility (Boogers, 2016: 7). They suggested to incorporate his business interests into a separate legal entity, in order to prevent the occurrence or appearance of conflict of interest. However, because of business reasons Oostveen ignored this suggestion (Boogers, 2016: 7).

Three months after the installation of Oostveen as municipal councillor, the municipality asked the advice of three scientists on the matter. The task of Commission Addink was to investigate how the business interests of Wim Oostveen were related to the interests of the city of Utrecht (Addink, Van der Krabben & Munneke, 2015: 3). The commission tried to find answers to related questions as well, namely the question which measures were necessary to prevent the appearance or occurrence of conflict of interest and the question whether other councillors also risk the occurrence of conflict of interest (Addink et al., 2015: 3). Below, I discuss the findings of this commission in more detail. For now it is enough to know that the commission advised that Oostveen shouldn’t influence and

participate in the decision-making, nor should receive confidential information regarding issues that were related to his personal interests.

Oostveen endorsed the advices, but after several months it appeared that Oostveen wasn't able to keep his word. When Oostveen wasn't a councillor yet, employees of his company Ovast mailed to members of the municipality council to complain about the work methods of the municipality. After Oostveen's installation as councillor, the e-mail contact changed. First, Oostveen himself sent the e-mails, instead of his employees. Also, the tone, character and frequency of the e-mails changed (Boogers, 2016: 8). The mails that Oostveen sent, were calling for action and can therefore be interpreted as attempts to influence the opinion-making and decision-making processes of matters concerning Oostveen's interests (Boogers, 2016: 9). To give an example of what the e-mails looked like, I translated a fragment that Oostveen wrote in one of his mails to a councillor of the Democratic Party (Dutch: D66) and an alderman of the Liberal Party (Dutch: VVD): "D66 and VVD never answered the Ovast-letters. The gentlemen Lars Roodenburg-D66 and Dimitri Gillisen-VVD never answer!! The municipality of Utrecht is crossing the boundaries with this." (Boogers, 2016: 9). In another mail, Oostveen requested the firing of a civil servant that was involved in Leidsche Rijn. The mayor and aldermen responded with the clarification that Oostveen wasn't permitted to ask for the resignation of civil servants (Hoekstra, 2017). The other municipal councillors also had difficulties with the e-mails that Oostveen sent. The chair of the leftwing party GroenLinks stated, that "even though Oostveen perfectly knows what the difference is between his different roles, others might have difficulties to do the same. I myself find it hard to determine when I speak with Wim Oostveen as councillor or as entrepreneur. For outsiders, like the press, this might even be harder" (Boogers, 2016: 10). Multiple councillors had expressed this uncomfortable feeling to Oostveen and his chairman Cees Bos. The tensions were at its highest, when a councillor of the Liberal Party accused Oostveen in an e-mail of "genuine conflict of interest" (Boogers, 2016: 4). This resulted in an accusation of "libel and defamation" from Oostveen to Buunk, the Liberal Party-councillor. Oostveen withdrew the accusation, under the condition that the alleged violation of conflict of interest would be investigated. Boogers carried out the investigation and presented his findings in 2016 (Boogers, 2016). In the section below, I discuss the opinion of Boogers, even as the findings of the Commission Addink and the statements made by Oostveen, municipal councillors, the board of mayor and aldermen and the media.

#### 4.2.3 Opinions conflict of interest

Commission Addink declared that they didn't find an incident of conflict of interest by the municipal councillors. However, they also stated that in the future the appearance of conflict of interest was possible, especially when it came to Wim Oostveen. As a result of the ancillary functions of Oostveen,

the commission had the opinion that it could regularly occur, that the municipal decision-making would be related to the interests of Oostveen. Therefore, they spoke of a high risk on potential conflict of interest (Addink et al., 2015: 52). In the Theoretical Framework, I described a potential conflict of interest as a situation in which a public official has personal interests that in the future can result in conflicting interests, when he receives certain functional responsibilities (as the consequence of a change in function or an elaboration of tasks). Only 3 months after the installation of Oostveen as councillor, the board of mayor and aldermen doubted Oostveen's capability to separate his personal and the municipal interests and asked for the advice of Commission Addink. This was the result of the unwillingness of Oostveen to incorporate his business interests into a separate legal entity. In that period of 3 months, no discussions had taken place concerning Leidsche Rijn.

In his rapport, Boogers paid much attention to the question whether the e-mails that Oostveen sent were a form of conflict of interest. Oostveen always stated that he could perfectly separate his different activities and interests from each other. As I showed in the former section, this was less clear to others. Boogers argued that even though Oostveen sent the mails in his capacity as entrepreneur, he was a municipal councillor simultaneously (Boogers, 2016: 8). According to Boogers, one is municipal councillor 24/7. It didn't matter that Oostveen sent the e-mails in his capacity as entrepreneur, because he carried his function as councillor at the same time. Thus, Boogers spoke of a situation of real conflict of interest.

Boogers concluded however, that a special kind of conflict of interest was the case, because the personal interests of Oostveen coincided with the interests of the common good (Boogers, 2016: 12). The interests entailed the progress of Leidsche Rijn and the reliability of the government towards entrepreneurs. So, Oostveen did try to influence the decision-making, but he always had the common good in mind. This situation resulted in a new form of conflict of interests, that Boogers called "unintentional conflict of interests" (Boogers, 2016: 12). However, the unintentionality did not diminish the undesirability of the conflict of interests. Fellow councillors still didn't feel comfortable discussing the subject in the presence of Oostveen, because it might look like they were serving his interests instead of those of the public. Oostveen reacted by saying that it vigorously never was his intention to influence his fellow councillors (VARnws, 2016). GroenLinks-chair Heleen de Boer expressed that she didn't think that he deliberately had been trying to manipulate the municipal council. "I therefore think that the term "unintentional conflict of interest" is well-chosen. But even when it is unintentional, it still is undesirable. We therefore don't believe that unchanged continuation of the current situation is a good idea" (VARnws, 2016). The chair of the Democratic Party explained the findings differently and said that the rapport made clear that "Oostveen tried to influence the opinion-forming and decision-making of the municipal council. This is therefore – even though unintentional – an obvious case of conflict of interest. The public sector and the controlling institutions

must prevent every appearance of conflict of interest, whether it is intentional or unintentional.” (VARnws, 2016). Liberal Party-councillor Buunk responded that he found it obvious that Oostveen should distance himself more from his business interests: “only then he is able to fully serve the interests of the city and its citizens” (VARnws, 2016).

Boogers stated that Oostveen should choose between his entrepreneurship and his membership of the council. Oostveen replied that he would stop sending e-mails, but that he wouldn't distance from the council or his company (Utrechtnieuws.nl, 2016). However, in March 2016, Oostveen did decide to temporarily leave the municipality council (DUIC, 2016). Oostveen declared: “At this moment, my business interests require priority. Therefore, they cannot be combined with my councillorship”. Before his death in March 2018, Oostveen wrote a farewell letter. Here, he claimed that others had tried their best to deprive Oostveen of his chair in the council and that after a while, he decided to quit himself, because otherwise the mayor would have forced him to step down (Nieuws030, 2018).

#### 4.2.4 Analysis

In this section, I will analyse the statements, circumstances and developments that are related to the alleged conflict of interest of Oostveen. The allegation was that Oostveen tried to influence the opinion-forming and decision-making of municipal councillors about a dossier that concerned his personal interests and municipal interests, while being a councillor himself. This analysis has the same structure as the analysis of the case of Van Rey. I first discuss the statements made by the relevant actors about their interpretation of conflict of interest. Then, I analyse the opinions of the same groups of actors concerning the allegations of conflict of interest in the case of Oostveen. Based on these findings, I pay attention to mitigating circumstances that influence the opinion-forming. I continue with a discussion of the presence of the categories of Kernaghan and Langford and I conclude this analysis with a summary of the findings.

##### 4.2.4.1 Generally defining conflict of interest

In the case description, I paid attention to the opinions of different groups of actors. These concern the commission Addink, Boogers, politicians in the municipality council and Oostveen. The actors all made general statements about the definition and their interpretation of conflict of interest. In Table 9, I present these statements.

**Table 9: Defining and interpreting conflict of interest**

	Addink et al	Boogers	Other politicians	Oostveen
<b>Aspects of conflict of interest</b>	<p>The individual interest of a public functionary gets intertwined with the public interest. This possibility causes that the public interest isn't served in an objective way anymore. (p. 5)</p> <p>---</p> <p>The mutual influencing of the different interests can exist, while it cannot be proven. A step further results in the appearance of conflict of interest. (p. 16)</p> <p>---</p> <p>The personal interests hold a difficult relation with the functionary's performance of his tasks and responsibilities and negatively influence them. (p. 17)</p>	<p>Trying to influence the decision-making in a way that benefits your personal interests, points to conflict of interest. (p. 11)</p> <p>--</p> <p>The office of alderman is one that is represented 24/7. When you become municipal councillor, you are one until you resign. It is therefore impossible to separate roles and interests. (p. 8)</p>	<p>Municipal councillors must act independently. Situations in which personal interests (including interests of those with whom the councillor is related to) become intertwined with municipal interests must be avoided. Even the appearance of conflict of interest must be avoided. (Code of conduct, 2016)</p>	<p>Conflict of interest occurs when one isn't able to separate his different roles and interests from each other.</p>

From this overview, we can conclude that conflict of interest was understood as a situation in which the interests of different roles – personal and functional – become intertwined and influence each other. This has a negative influence on the public interest. Interesting is the statement of Addink et al., that real conflict of interest doesn't necessarily need evidence. Unfortunately, they didn't explain how this works. It also stands out that Boogers interpreted the office of councillor as one that is represented 24/7 and that personal interest include both one's own interests and those of friends and family of the public functionary. In the next section, I pay attention to how the actors evaluate the presence of conflict of interest in the case of Oostveen.

#### 4.2.4.2 Assessments of the allegation of conflict of interest in the case of Oostveen

Oostveen was accused of conflict of interest, because he would have tried to influence the opinion-forming and decision-making of municipal councillors about a dossier that concerned his personal interests and municipal interests, while being a councillor himself. In Table 10, I present the assessments of the actors that are involved about the allegation.

**Table 10: Opinions of actors involved about conflict of interest in case of Oostveen**

<b>Allegation</b>	<b>Opinion Addink et al</b>	<b>Opinion Boogers</b>	<b>Opinion politicians other parties</b>	<b>Opinion Oostveen</b>
<b>Influencing opinion-forming and decision-making</b>	Potential conflict of interest: Oostveen didn't do anything yet to influence the decision-making, but this was a risk for the future.	Real conflict of interest: the office of municipal councillor is one that is represented constantly. It was therefore impossible to serve two opposing interests simultaneously when one was related to the public function. Furthermore, the mails were calling for action and were therefore interpreted as attempts to influence.	Real conflict of interest: it was impossible to separate the different roles from each other. In his role as entrepreneur, Oostveen sent e-mails to himself as municipal councillor too. Those roles and interests were too interwoven. --- Fellow councillors didn't know whether they spoke to Oostveen as entrepreneur or as councillor. --- Councillors with the same opinion as Oostveen felt uncomfortable, because others might have had the idea that they were supporting the interests of Oostveen instead of the those of the public.	No conflict of interest: Oostveen was able to separate the different interests.

The personal interests of Oostveen were financial in nature and the conflict of interest was both potential and real. It was potential, because when Leidsche Rijn would be the subject of discussion in the municipal council, Oostveen would have had access to confidential information and would have been able to influence the decision-making. The council didn't discuss the dossier yet, so conflict of interest had not taken place in this form, but formed a risk for the future. Real conflict of interest took place in the form of the e-mails Oostveen wrote to other councillors and the board of mayor and aldermen. The two roles that he fulfilled – entrepreneur and councillor – were considered to be too connected, which made it impossible to separate them. This is related to what Boogers stated: when you become municipal councillor, you represent this role constantly. It was therefore considered to be impossible to separate the public interests that a councillor serves from the other roles he fulfils. When they concern the same project, they are automatically related and then it isn't possible to make a clear separation between the roles. This is supported by the statements of the fellow councillors: they didn't feel comfortable speaking to Oostveen, because they weren't able to separate his different roles and interests.

4.2.4.3 Mitigating circumstances

While observing the opinions of the actors on the severity of the integrity violation, it appeared that several contextual elements influences their judgement. In Table 11 I present these mitigating circumstances.

**Table 11: Circumstances with a mitigating influence on the judgement of the severity of the violation**

	<b>Opinion Addink et al</b>	<b>Opinion Boogers</b>	<b>Opinion politicians other parties</b>	<b>Opinion Oostveen</b>
<b>Mitigating circumstances</b>	Dossier wasn't discussed in the council yet.	Unintentional COI: Oostveen's personal interests and the public interests coincided, while Oostveen's motive was to receive money from the municipality and the municipal's interest was to develop a new living area to enlarge the	They had the opinion that unintentional COI was a good way to describe the situation.	It wasn't Oostveen's intention to influence his fellow councillors.

		housing possibilities. Even though the COI was unintentional, it still wasn't desirable.		
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Based on this overview, we can conclude that two factors had a mitigating effect. First, the fact that the dossier wasn't discussed in the council yet, made that Oostveen hadn't been able to really influence the decision-making concerning Leidsche Rijn. Thus, the concrete effect of the conflict of interest was small. The other mitigating circumstance was that the conflict of interest was considered to be unintentional. This is a new type of conflict of interest. It can be described as as a situation in which one's personal interests and the public interests coincide, while the motives that lie behind it are different. The functionary aims for personal gain, while he only should be interested in the public interest. Oostveen's motive was to receive money from the municipality and the municipal's interest was to develop a new living area to enlarge the housing possibilities. Even though the interests are the same, this type of conflict of interest still wasn't desired. Others might have had the idea that the Oostveen only served his own interests, instead of the interests of the public. For his fellow councillors the same principle was applicable: colleagues that shared the same opinion might have had the idea that they were supporting the interests of Oostveen instead of those of the public. The effect and unintentionality mitigated the severity of the conflict of interest, but didn't diminish its undesirability.

#### 4.2.4.4. Categorization of Kernaghan and Langford

The last distinction in conflict of interest that I discuss, is related to the categories that Kernaghan and Langford presented. In Table 12, I show which categories are present in the case of Oostveen and how these categories took form.

**Table 12: Categorization of Kernaghan and Langford**

Categories	Description	Oostveen
<b>1. Self-dealing</b>	A situation in which one takes an action in an official capacity that involves dealing with oneself in a private capacity and that confers a benefit on oneself. An example is a public servant who awards a contract to a company that he or she owns.	Not applicable
<b>2. Accepting benefits</b>	Accepting or soliciting a benefit from someone with whom one does	Not applicable

	business as a public servant. The acceptance of benefits can take the form of bribery at the one extreme and the receipt of benefits of nominal value at the other. A wide range of benefits can be conferred on public servants, including gifts, meals, free travel, paid vacations, entertainment and money.	
<b>3. Influence peddling</b>	The professional solicits benefits in exchange for using her influence to unfairly advance the interest of a particular party.	Not applicable
<b>4. Using government property or resources</b>	This variant ranges from stealing office supplies for home use to using software which is licensed to your employer for private work of your own.	Not applicable.
<b>5. Using confidential information</b>	The use for personal or private purposes of a particular government property, namely confidential information.	A potential conflict of interest is the use of confidential information for the personal interests of Oostveen.
<b>6. Outside employment or moonlighting</b>	This refers to the work or activity in which a person engages outside normal working hours for additional remuneration. Moonlighting needs restriction, when the activity is in direct competition with the employer, the employee's work is affected, the employer's property is being used to engage in the activity, confidential information is being used by the employee, the employee is using his/her position to solicit business or when the employee's activity could be perceived by the public to be a conflict of interest.	The interests of the outside employment of Oostveen were both similar and opposing to those of the municipality. On the one hand, the interests were similar, because they both wanted progress of Leidsche Rijn and a better reliability of the government towards entrepreneurs. On the other hand, the interests of Oostveen were opposed to those of the municipality, because Oostveen wanted progress of Leidsche Rijn for a different reason than the municipality.
<b>7. Post-employment</b>	In this variant, a person who resigns from public or private employment goes into business in the same area. For example, a former public servant sets up a practice lobbying the former department in which she employed.	Not applicable.
<b>8. Personal conduct</b>	Personal conduct may constitute a conflict of interest when a public servant's conduct makes him vulnerable to pressure to use his public office improperly (e.g. in case of a drug or gambling addiction) and	Not applicable.

when his conduct brings significant discredit to the government or to a particular department and thereby undermines public trust in public officials.	
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In this case, conflict of interest occurs in the form of the 5<sup>th</sup> and 6<sup>th</sup> types in the categorization of Langford and Kernaghan. A potential conflict of interest is the use of confidential information for personal interests and real conflict of interest occurs in Oostveen's outside employment. The relation between his outside employment and his office as councillor is an interesting one, because the interests are both in line with and opposing to each other. That is new for the categorization that Kernaghan and Langford distinguished. So far, they only took into account situations in which the outside employment is in competition with the public function. As I showed earlier: even though the interests were in line with those of the municipality, the conflict of interest still was undesired.

#### *4.2.4.5 Summary*

The summary that we can make of this analysis, is the following. The outside employment of Oostveen resulted in unintentional conflict of interest. This was a case of real conflict of interest. Oostveen tried to influence his fellow councillors on a dossier that he had personal interests in too. Even though his personal interests and the municipal interests partly overlapped, it still wasn't considered acceptable. The unintentionality did mitigate the severity of the violation. The same applies to the absence of a concrete effect of the violation. There was no concrete effect, because the dossier wasn't discussed in the council yet. Therefore, the use of confidential information formed a potential case of conflict of interest. We also noticed that the office of municipal councillor is one that is represented nonstop.

## 5. Between-case analysis

In this chapter, I compare the two cases that were described and analysed in the previous chapters. I distinguished the following sections: interests, conflict of interest and mitigating circumstances. In the first section, the different types of interest are discussed and compared. In the second section, I pay attention to the general statements that were made about conflict of interest, the judgements about the conflict of interest in the cases, what we can conclude about the three types of conflict of interest and the categorization of Kernaghan and Langford. I conclude this analysis, with a discussion of the contextual factors that influenced the opinion-forming.

### 5.1 Interests

In the table below, the interests of Van Rey and Oostveen are presented. As we can see, Oostveen only had financial interests, while Van Rey had both financial and non-financial interests. The non-financial interests of Van Rey also involved other people.

**Table 13: Interests in the cases of Van Rey and Oostveen**

<b>Personal interests</b>	<b>Van Rey</b>	<b>Oostveen</b>
<b>Financial</b>	His real-estate and stock (proven, but not severe) --- The trips and excursions (proven)	Money claim to the municipality.
<b>Non-financial</b>	His friendship with Van Pol (proven) --- His position in the municipality (unproven) --- Partisan win (unproven)	-
<b>Involvement of others</b>	Van Pol (proven) The candidate-mayor (unproven)	-

### 5.2 Conflict of interest

In both cases, the actors involved made some general statements about conflict of interest. These statements mostly overlapped. They stressed that both real and apparent conflict of interest must be avoided. Public officials must act independently, objective and autonomously. The appearance of conflict of interest is present when outsiders might have the idea that conflict of interest is the case.

The offices of alderman and municipal councillor are represented 24/7. Interests can be financial and non-financial and may concern friends or family of the functionary.

In case of Van Rey, we came across all three kinds of conflict of interest. However, in the final penalties only apparent and real conflict of interest were mentioned. In the case of Oostveen, potential and real conflict occurred. In Table 14 the differences in motivation for the categorization is shown. In this Table, only the final judgements are presented.

**Table 14: Final judgements about conflict of interest in the cases of Van Rey and Oostveen**

	Van Rey	Oostveen
<b>Potential</b>	-	Violation: Oostveen would have had access to confidential information and would have been able to influence the decision-making. Motivation: the dossier wasn't discussed yet and therefore, real conflict of interest didn't occur.
<b>Apparent</b>	Violation: leaking confidential information. Motivation: there was no evidence that the leaking resulted in a privileged position of Van Rey.	-
<b>Real</b>	Violation: preferential treatment of Van Pol in return for trips and excursions Motivation: business was discussed and Van Pol paid the majority of the costs. --- Violation: possession of real estate and purchase of a stock in a shopping centre. Motivation: Van Rey was responsible for economic growth and spatial planning in Roermond, but had personal interests in the stimulation of certain objects and areas.	Violation: influencing opinion-forming and decision-making by sending e-mails to fellow councillors. Motivation: the office of councillor is represented 24/7 and it is therefore impossible to make a separation between that role and a personal one, when interests are related.

The first conclusion that we can make, is that evidence is needed to be able to speak of real conflict of interest and that that evidence is needed to attach hard consequences to it. In the case of Van Rey, the leaking of confidential information as a form of conflict of interest, wasn't penalised. The court ruled that the lack of evidence only made an interpretation as apparent conflict of interest possible, not real conflict of interest. The court decided not to make any statements about an unproven

allegation. The same occurred when the Court of Rotterdam didn't have the information that Van Pol paid the majority of the costs of the holiday trips and that Van Pol and Van Rey discussed business. The court ruled here, that real conflict of interest couldn't be proven and that they therefore were unable to make a statement about it. In the case of Oostveen the evidence was obvious: Oostveen sent e-mails to his fellow councillors and therefore, we can speak of real conflict of interest.

The second conclusion that we can draw from both cases, is that the offices of alderman and municipal councillor are represented 24/7. In the case of Oostveen, this became clear when Boogers stated that the office of municipal councillor couldn't be put aside for a short period of time, in order to promote one's personal interests. This vision can also be derived from the statements of Oostveen's fellow municipal councillors. In the case of Van Rey was mentioned that Van Rey should have been aware of the possibility that people would try to influence him in private circumstances, because he always represented the office of alderman.

We can also conclude that we need to distinguish a different type of conflict of interest: unintentional conflict of interest. This type of conflict of interest occurred in the case of Oostveen. It entails that Oostveen's personal interests and the public interests coincided, while their motives differed. Oostveen's motive was to receive money from the municipality and the municipal's interest was to develop a new living area to enlarge the housing possibilities. In the discussion, this type is mentioned as an addition to the literature about conflict of interest.

Finally, I pay attention to the categorization of Kernaghan and Langford. As can be concluded from Table 15 below, the categories of conflict of interest that occurred in the two cases differ largely. In both cases, the use of confidential information was related to another category. For Van Rey and Oostveen this concerned respectively influence peddling and outside employment. We therefore get the idea that the different categories might be interrelated and might influence each other.

**Table 15: Categories of conflict of interest in the cases of Van Rey and Oostveen**

<b>Categories</b>	<b>Van Rey</b>	<b>Oostveen</b>
<b>Self-dealing</b>	Van Rey bought a stock of a shopping centre and possessed real-estate in Roermond, while he was also responsible for economic growth of his city.	Not applicable
<b>Accepting benefits</b>	Van Rey accepted benefits in the form of trips and excursions, from a project developer he worked with.	Not applicable
<b>Influence peddling</b>	(Van Rey leaked information to candidates for the position of mayor, that were from the same party as he was. He might have favoured his party and strengthened his own	Not applicable

	position. However, this is not proven and Van Rey is absolved of these allegations.)	
<b>Using government property or resources</b>	Not applicable.	Not applicable.
<b>Using confidential information</b>	(Van Rey leaked information to candidates for the position of mayor, that were from the same party as he was. He might have favoured his party and strengthened his own position. However, this is not proven and Van Rey is absolved of these allegations.)	A potential conflict of interest is the use of confidential information for the personal interests of Oostveen.
<b>Outside employment or moonlighting</b>	Not applicable.	The interests of the outside employment of Oostveen were both similar and opposing to those of the municipality. On the one hand, the interests were similar, because they both wanted progress of Leidsche Rijn and a better reliability of the government towards entrepreneurs. On the other hand, the interests of Oostveen were opposed to those of the municipality, because Oostveen wanted progress of Leidsche Rijn for a different reason than the municipality.
<b>Post-employment</b>	Not applicable.	Not applicable.
<b>Personal conduct</b>	Not applicable.	Not applicable.

### 5.3 Mitigating circumstances

In both cases, it became clear that the opinion-forming about the severity of conflict of interest is influenced by contextual factors (or: mitigating circumstances). A factor that occurred in both cases, is the concrete effect of the violation. In the case of Oostveen this factor had a mitigating effect, because Oostveen hadn't been able to influence real decision-making, since the dossier wasn't discussed in the council yet. In the case of Van Rey this factor took the form of the height of the profits: both Van Rey and Van Pol didn't profit largely from the conflict of interest. This also applied to the real-estate that he possessed. Other mitigating circumstances in the case of Van Rey, concerned his achievements for Roermond, the unlikeliness that he would make the same mistake again (because of his age and clean criminal record) and the damage that he already had suffered (resignation of several offices, extensive media attention). The other mitigating circumstance in the case of Oostveen, concerns the unintentionality of the conflict of interest. This is already discussed. In the case of Van Rey we find a similar case, in the form of the purchase of a stock in a new shopping centre. Van Rey bought the stock to show that he had confidence in the success of the new centre. Simultaneously, he could personally

benefit from it too. His personal and functional interests overlap and that is a case of conflict of interest. However, this isn't a real case of unintentional conflict of interest, because – as discussed before - Van Rey didn't intent to profit from his purchase.

An interesting difference between the two cases, is the amount of time that passed by before the (potential/apparent/real) conflict of interest was discussed. Oostveen had meetings with the municipality about the risk on conflict of interest, from the beginning of his election. Three months after his installation, the first investigation was carried out. During this time, only potential conflict of interest was discussed. The presence of real conflict of interest wasn't relevant yet. In the case of Van Rey, the risk on conflict of interest was also known and agreements were made at the beginning of his appointment. However, the appearance of conflict of interest increased during time, but the municipality didn't interfere. It took years before the conflict of interest was discussed and things changed. An explanation for this difference can be sought in the popularity and power of the two politicians. The political career of Van Rey was significantly longer than that of Oostveen and Van Rey had gathered a group of people that fully supported him. The mayor, his fellow aldermen and many municipal councillors, civil servants and citizens had the opinion that Van Rey was important for the well-being of the city. Oostveen was way less popular. He already had a long history of disagreement with the municipality and his fellow councillors had trouble with the different roles that Oostveen fulfilled. Oostveen also wasn't as popular as Van Rey in the city that he worked for: where Van Rey received 3010 preferential votes in the elections of 2014, Oostveen was only good for 307 votes (Gemeente Utrecht, 2014: 42). The factor of popularity and power can be interpreted as a mitigating factor as well. However, this claim cannot be justified without proper research.

## 6. Discussion & conclusion

In this final chapter, I first connect the empirical findings of the case study with the academic literature and present the implications of this study for the theory on conflict of interest. Then, I give an answer to the research question. I conclude the chapter with the limitations of this research and with suggestions for further research.

### 6.1 Theoretical implications

The overview of interests that I presented at the end of the Theoretical Framework, was applicable and complete for the cases that I described and analysed. I don't make adjustments to Table 3 and present it here again as a categorization of interests.

Functional interests	Interests that are coherent with the public function and that relate to public interests
Personal interests	Interests that are related to the public official as an individual
- Financial	Interests that are related to the (potential) gain or loss of money
- Non-financial	Interests that are related to one's status or position
➔ Personal	Interests that are related to one's status or position
➔ Favouring of others	Nepotism, favouritism

In the Theoretical Framework, I presented Table 4 that included the different appearances of conflict of interest that are mentioned in the academic literature. These only concerned situations of conflicting personal and functional interests of a public functionary. Based on the case study, I made several adjustments.

First, I had to add the possibility of unintentional conflict of interest. This type of conflict of interest was first distinguished in the case of Oostveen, but also occurred in the case of Van Rey. It can be described as a situation in which one's personal interests and the public interests coincide, while the motives that lie behind it are different. The functionary aims for personal gain, while he only should be interested in the public interest. Unintentional conflict of interest can only occur when the conflict of interest is real. Therefore, I added it as a subtype of real conflict of interest.

Another adjustment that must be made, based on the case study, concerns the need to avoid potential, apparent or real conflict of interest. All three types need to be avoided. In the case of Van

Rey it became clear that the appearance of conflict of interest partially can be avoided by transparency, but that that isn't sufficient. All three types were negatively evaluated. However, only when real conflict of interest was the case, hard consequences were connected to the situation: Van Rey got punished by the court and Oostveen had to resign. In a general remark to the table, I added this adjustment.

Several categories of conflict of interest occurred in the cases. It seemed that the use of confidential information is interrelated to other types. However, I don't have evidence that is strong enough to support this claim. Therefore, I don't make changes to the categorization of Kernaghan and Langford. The categorization was useful in finding and understanding the different variants of conflict of interest.

The opinion-forming about the severity of conflict of interest is influenced by the mitigating contextual circumstances. In both cases, the minimal concrete effect had a mitigating influence on the perception of the severity of the violation. Other contextual factors that influenced the opinion-forming of the severity of the conflict of interest, were for instance the achievements that the accused reached for the public interest and the fact that the accused wasn't able to make the same mistake again. When discussing the aspects that define conflict of interest, the presence of mitigating circumstances needs to be included. I added this as a general remark to the table.

The adjusted Table is presented below as Table 16.

<b>Table 16: Appearances of conflict of interest</b>	
<i>Types of conflict of interest**</i>	
Potential*	A public official has personal interests that in the future can result in conflicting interests.
Apparent*	The personal interests of a public official appear to wrongfully influence his/her functioning, while this actually isn't proven.
Real*	The personal interests of a public official conflict with his functional interests.
- Unintentional	A situation in which one's personal interests and the public interests coincide, while the motives that lie behind it are different. The functionary aims for personal gain, while he only should be interested in the public interest.
<i>Categories of conflict of interest (Kernaghan &amp; Langford, 2014)**</i>	

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1. Self-dealing	A situation in which one takes an action in an official capacity that involves dealing with oneself in a private capacity and that confers a benefit on oneself
2. Accepting benefits	Accepting or soliciting a benefit from someone with whom one does business as a public servant
3. Influence peddling	The professional solicits benefits in exchange for using her influence to unfairly advance the interest of a particular party.
4. Using government property or resources	This variant ranges from stealing office supplies for home use to using software which is licensed to your employer for private work of your own.
5. Using confidential information	The use for personal or private purposes of a particular government property, namely confidential information.
6. Outside employment or moonlighting	This refers to the work or activity in which a person engages outside normal working hours for additional remuneration.
7. Post-employment	In this variant, a person who resigns from public or private employment goes into business in the same area.
8. Personal conduct	Personal conduct may constitute a conflict of interest when a public servant's conduct makes him vulnerable to pressure to use his public office improperly and when his conduct brings significant discredit to the government or to a particular department and thereby undermines public trust in public officials.

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\* All types of conflict of interest need to be avoided.

\*\* The perception of the severity of the conflict of interest can be influenced by contextual aspects that have a mitigating effect.

## 6.2 Answering the research question

The research question of this thesis was: "What can we learn about the meaning of conflict of interest on the Dutch municipal level based on a comparative case study?" The answer consists of three elements: a definition and two tables. Based on the case study, I conclude that the working definition of conflict of interest that I presented in the Theoretical Framework, can be maintained. It is a workable definition and describes the concept in rough lines. For a correct understanding, Table 3 and Table 16

are needed. The definition in combination with the two tables form the answer to the research question. Here, I repeat the definition of conflict of interest (that thus needs to be complemented with and interpreted in the light of Table 3 and Table 16).

*“Conflict of interest concerns situations in which the public functionary has personal interests that are difficult to combine with the performance of his functional tasks and responsibilities and that influence them in a negative way”. (BIOS, 2010: 9).*

### 6.3 Limitations and suggestions for further research

The aim of this research, was to come to a better understanding of the concept conflict of interest on the Dutch local level. To reach this, I conducted a small-N comparative case study. In the Methodology chapter, I addressed the limitations of this kind of research concerning the validity and reliability and the measures that I took to mitigate them. One of the criticisms that I made, was related to the generalizability of the findings. Because I only investigated two cases, we cannot determine that I came across and discussed all aspects of conflict of interest. Otherwise put: I didn't reach the point of data saturation. Therefore, I would recommend to conduct further research to the meaning of conflict of interest on the local level and to examine more critical and extreme cases. This will also support the strength of the findings: when similar research results in the same findings – the maintenance of the definition and Table 3, the possible interrelatedness between the categories of Kernaghan & Langford, the existence of unintentional conflict of interest, the need to avoid conflict of interest, the influence of mitigating circumstances, like popularity/power and the degree in which the conflict of interest has a concrete effect – the external validity increases. We would also come to a better understanding, if the findings that I just referred to would be the central subject of research.

Another limitation of this research concerns the fact that I only used existing documents and texts for this research. This type of source was useful, because it already existed. Simultaneously, it also limited me, because I was tight to material that was available and because the analysis depended on my interpretation of the material. To reach a better understanding of the concept, it might be insightful to conduct interviews with actors that were involved. The question how they perceive conflict of interest and what it consists of, can be discussed intendedly, which results in extra and rich data. This also would increase the reliability of the findings, because the researcher wouldn't solely dependent on his interpretation of documents anymore.

The last suggestion for further research that I want to make, concerns the way that is dealt with conflict of interest when it occurs. What are the possibilities that a public functionary can choose from, in case of potential, apparent or real conflict of interest? Can he choose, or is he forced in a

certain direction? Does the type of conflict of interest influence the decision? Do other factors influence the decision? Et cetera. I tried to diminish the lack in understanding of conflict of interest on the Dutch local level, but this research topic still needs more investigation.

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