

To: Ms. Judith Beville
Mr. Hal Samis

cc: Greenburgh Town Board
Greenburgh Town Clerk

OPINION 2010-6

Background

On January 20, 2010, Hal Samis, a resident of the Town of Greenburgh, submitted a Verified Complaint to the Board of Ethics pursuant to the "citizen complaint" procedure authorized by Section 11D(3) of the Code of Ethics adopted July 27, 2007. The complaint states that Town Clerk, Ms. Judith Beville, was a "member of Valhalla School Board" and she "did not disclose that a lawsuit by the Valhalla School District had been filed in July 2009 against the Town." The complaining party alleges that this violates "570-4D Disclosure of . . . involved in decision making process . . . fully disclose on the public record of the Town Board at a regular public meeting."

Section 4D of the Code of Ethics requires that a Town official shall disclose any "direct or indirect Interest in legislation, Contracts or official action pending before the Town Board . . ." For the purposes of the Code of Ethics, "Interest" is defined in Section 3 as "a pecuniary, financial or other material benefit to the [Town official] . . . or any of her/his Affiliates."

Mr. Samis, in the complaint he filed, omitted the critical element of the statute requiring that the disclosure required be of an "Interest" as defined in the Code of Ethics. On March 19, 2010, the Board of Ethics inquired in writing of Mr. Samis two questions: (A) What Interest, as defined in Section 3 of the Code of Ethics, did he assert were not disclosed, and (B) With respect to each such Interest, to specify how that was a pecuniary, financial or other material benefit to Ms Beville.

Mr. Samis responded by email dated March 28, 2010, in which he stated that Ms. Beville has an Interest because (i) the lawsuit, if successful, "would result in a substantial tax savings to each and every taxpayer in the VSD [Valhalla School District], including Ms. Beville" and (ii) she is an elected official of the Town and as such receives remuneration from the Town and disclosure of the lawsuit would be "contrary to [her] interest in continuing to hold office. Mr. Samis response also stated that "while Ms. Beville was town clerk and chief recordkeeper, the Town failed to notify the court that VSD had furnished to the court an incomplete copy" of a document and the page omitted from the document "was helpful to the Town's defense."

Mr. Samis made additional arguments in support of the comment by email dated April 21, 2010 and by oral comments at the Board of Ethics April 7 and May 19, 2010 meetings.

Opinion

A.

Pursuant to Section 7C of the Code of Ethics, a Town official may hold a school or fire district office and fully participate in the activities of such districts. As noted above, (i) the Code of Ethics requires Interests in official actions pending before the Town Board to be disclosed and (ii) Interests is defined in a limited manner in terms of pecuniary, financial or other material benefits.

The Board of Ethics believes, and decides, that a lawsuit against the Town is an "official action pending before the Town Board." So, if a Town official has an Interest, as specifically defined in Section 3 of the Code of Ethics, in a lawsuit against the Town, including an official who is holding a school or fire district office, Section 4D of the Code of Ethics requires disclosure.

As noted above, Interest as used in the Code of Ethics is limited by the definition of that term in Section 3. The precise perimeters of that limited definition are *not* fully decided by this opinion. The Board of Ethics does, however, make several decisions with respect to the definition of Interest.

(i) The Board of Ethics does not believe that mere general taxpayer status alone is an Interest as defined in the Code of Ethics. Mere taxpayer status may be an interest for other purposes, but as specifically defined in the Code of Ethics the term Interest is limited to pecuniary, financial or other material benefit. If mere taxpayer status alone were *hypothetically* an Interest under the Code of Ethics, each member of the Town Board would have a Code of Ethics-defined Interest in virtually every matter before it. Town Board members are residents of the Town, and virtually all matters have an impact on the Town's budget in respect to which they have a general taxpayer interest. While a Town

official may have an Interest as defined in the Code of Ethics in respect of the specific tax assessment on property she/he owns in the Town, the Board of Ethics concludes that general taxpayer status is not an Interest as defined in the Code of Ethics.

(ii) Similarly, the Board of Ethics decides that receipt of remuneration from the Town by an elected official is not in and of itself an Interest as defined in the Code of Ethics. Otherwise, each controversial political issue would be a Code-defined Interest.

The Board of Ethics recognizes that the lawsuit involves potentially millions of dollars of benefit to the Valhalla School District. As noted above, the Code of Ethics expressly allows a Town official to be a member of, and fully participate in the activities of, a school or fire district. There is no prohibition in the Code of Ethics that precludes a Town official from being a board member of a school or fire district which sues the Town. It is potentially possible that a litigation of a school or fire district against the Town could, in some circumstances, potentially accrue to the individual benefit of a Town official, but there is no allegation before the Board of Ethics as to Ms. Beville receiving any material benefit from the lawsuit in some personal and unique way. The recovery, if any, would go to the School District, where her only pecuniary interest is that of a taxpayer generally. Whether the lawsuit is successful or not does not appear to have any individual material benefit which is unique to Town Clerk Beville. At the May 19, 2010 meeting of the Board of Ethics, Mr. Samis stated that he acknowledged that Ms. Beville had no personal interest in the lawsuit.

The other matters referred to in Mr. Samis' March 28 written response are matters of (i) fair campaign practices or (ii) good municipal governmental administration or (iii) issues pertaining to the legal representation of the Town, but contrary to Mr. Samis' assertions none of those matters are within the subject matter of the Town's Code of Ethics. Mr. Samis' oral comments have added the assertion that Ms. Beville should have disclosed to the Greenburgh Town Board that the VSD was contemplating a lawsuit against the Town. Contrary to Mr. Samis' assertion, there is no provision in the Town's Code of Ethics that requires that a Town official, holding a school or fire district office as permitted by Section 7C, to make disclosure to the Town of any potential action, if know to her or him, being contemplated by such district.

Mr. Samis also seems to make a broad assertion that Town officials have an ethical obligation to disclose litigation against the Town. Contrary to Mr. Samis' assertion, the Town does not have an ethical requirement in the Code of Ethics that all Town officials, or any particular Town official, disclose all litigations against the Town independently of a Code of Ethics-defined Interest in the litigation(s).

B.

A number of written questions were posed to Ms. Beville by the Board of Ethics on April 21, 2010 pursuant to Section 12 of the Code of Ethics, as to which Ms. Beville timely responded on May 14, 2010. Ms. Beville voluntarily requested time on the agenda of the May 19 Board of Ethics meeting, made a statement at the meeting, and then answered questions posed by the Board of Ethics counsel and by Board of Ethics members. As reflected in the May 19, 2010 minutes, Ms. Beville agreed to provide an Affidavit to the Board of Ethics, to be prepared by its counsel, stating that she had recused herself from matters relating to the lawsuit, attesting to the veracity of her written responses, and stating that she had not attended (except for public meetings) or participated in meetings or discussions regarding the VSD lawsuit or the underlying grant.

The Board of Ethics is of the view that such an Affidavit would, except as set forth above in A, obviate the need to determine the scope of the term Interest as used in the Code of Ethics. The intent of the disclosure requirement of personal interests as defined in the Code of Ethics, in the view of the Board of Ethics, is (i) to inform the public and the other members of the acting body before a person acts on a matter or (ii) to possibly to lead to recusal from acting at all. The facts sworn to in the Affidavit would establish that the public policy purposes of an Interest-disclosure rule would have been materially satisfied. There was early recusal and the recusal was abided by. Thus, the Board of Ethics determined to conditionally dismiss the complaint, on the condition that that Ms. Beville submit such an Affidavit, satisfactory in form to the Board's counsel and satisfactory in substance to the Board of Ethics members. Ms. Beville signed the Affidavit as submitted by Board of Ethics counsel on June 3, 2010. The Board of Ethics notes that there is some extrinsic evidence consistent with Ms. Beville's Affidavit (a newspaper article dated April 4, 2008 which reports that Ms. Beville had recused herself from the NYS Comptroller audit report on the grant and would recuse herself from any ensuing litigation), and that there is no contradicting extrinsic evidence before the Board. The Affidavit is in form satisfactory to the Board's counsel and is satisfactory in substance to the Board members. Having satisfied the condition determined at the May 19 meeting, the Board of Ethics hereby dismisses the complaint.

BY THE BOARD OF ETHICS

Adopted at June 30, 2010 Meeting

Voting For: Mr. McLaughlin

Mr. Rivera
Mr. Sigal

(Mr. Scott had recused himself from this matter)