

To: Supervisor Paul Feiner
Councilman Francis Sheehan
Councilwoman Diana Juettner
Mr. Hal Samis

cc: Greenburgh Town Board
Greenburgh Town Clerk

OPINION 2010-8

Background

On June 25, 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 Supervisor Paul Feiner, Councilman Francis Sheehan and Councilwoman Diana Juettner violated Code of Ethics Section "570-4D . . . Disclosure of an Interest in official action."

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 asserts that there was not timely disclosure of a lawsuit against the Town by the Valhalla School District and that the parties complained against had an Interest (a) in salary and benefits from the Town and (b) in hiding "bad news" so that others, including himself, would not run against them for public elected office. He also asserts that the lawsuit was not disclosed in the official offering materials pertaining to the sale of Town bonds.

Opinion

In Opinion 2010-6, the Board of Ethics concluded 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, Section 4D of the Code of Ethics requires disclosure.

As noted in Opinion 2010-6, 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 were *not* fully decided by that opinion, but the Board of Ethics did make several conclusions with respect to the definition of Interest. One of the conclusions reached by the Board of Ethics was 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, for otherwise each controversial political issue would be a Code-defined Interest.

In Opinion 2010-6, the Board of Ethics also concluded that assertions relating to timing of disclosure to "hide bad news" as it relates to political campaigns was a matter of fair campaign practices and is not a matter which is the subject of the Town's Code of Ethics.

Finally, there is nothing in the Code of Ethics which relates to issue of whether all required material disclosures have been made in securities offerings. That is the subject matter of federal and state securities laws.

The Code of Ethics does not have an ethical requirement that all Town officials, or any particular Town official, or any particular category of Town officials, disclose all litigations against the Town independently of a Code of Ethics-defined Interest in the litigation(s). The complaint does not implicate any Code of Ethics-defined Interest. Moreover, none of the other assertions are matters covered by the Code of Ethics. Thus, 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. Scott
Mr. Sigal