

OPINION 2013-3

To: Supervisor Paul Feiner
Greenburgh Town Board
Mr. Thomas Bock
Town Clerk Judith Beville
Town Attorney Timothy Lewis

On August 13, 2013 a verified complaint alleging a violation of the Code of Ethics adopted by the Town of Greenburgh was filed with the Town of Greenburgh Board of Ethics. The allegations in the complaint are that Paul J. Feiner, Town Supervisor, Judith A. Beville, Town Clerk and Timothy Lewis, Town Attorney solicited or accepted services in aid of their political campaigns for reelection in violation of Section 570-7(A) of the Code of Ethics. The complaint also alleges that by collectively violating Section 570-7(A), they also violated Section 570-13.

Section 570-7A (1) provides that “no public officer or agency member shall directly or indirectly, solicit or accept any contribution or money, services or thing of value for any political party, campaign committee or any candidate from any appointed officer or employee or from any applicant or from an applicant’s affiliates or from an applicant’s legal representatives or professional consultants or their respective affiliates. No public officer, employee or agency member shall, directly or indirectly, use her/his authority or official influence to compel or induce any other public officer, employee or agency member or applicant or any affiliate thereof or an applicant’s legal representatives or professional consultants or their respective affiliates to pay, promise to pay, or make any political assessment, subscription or contribution of money, services or thing of value. The provisions of this subsection also shall apply to any applicant who had, within the prior 12 months from the time in question, an application pending covered by the previous sentence, the applicant’s affiliates, and the applicant’s legal representatives or professional consultants and their respective affiliates.

Section 570-13 provides that “no public officer or employee shall induce any other person to violate, attempt to induce any other person to violate, or aid any other person in violating, any provision of this chapter. Any person who violates this section has committed a violation of this chapter.

The Board of Ethics takes notice that Paul Feiner as Town Supervisor and Judith Beville as Town Clerk are public officers within the meaning of 570-7(A) of the Code of Ethics. The Board of Ethics also takes notice that Timothy Lewis as Town Attorney is an appointed officer within the meaning of 570-3(A) of the Code of Ethics and a public officer within the meaning of 570-13.

BACKGROUND

1. The complaint in this case was properly filed in accordance with the Code of Ethics and Board of Ethics procedures. In accordance with the Town of Greenburg, NY Board of Ethics

Internal Rules 6(a), a preliminary determination to dismiss the complaint or proceed to a Phase 1 investigation must be made.

2. The complaint alleges that after failure to gain the endorsement of the Greenburgh Town Democratic Committee on May 24, 2013, Paul Feiner and Judith Beville elected to create their own petition and gather 1,000 signatures from Democrats registered to vote in the town of Greenburgh. Upon completion of this petition they were required to file the petition with the Westchester County Board of Elections if they intended to put their names on the ballot for reelection as Town supervisor and Town Clerk respectively. Between June 1, 2013 and July 8, 2013, Town Attorney Timothy Lewis carried petitions for Paul Feiner and Judith Beville obtaining a total of 58 signatures. These signatures were allegedly accepted by Mr. Feiner and Ms. Beville and presumably aided in their names being placed on the ballot. The complaint alleges that the carrying of petitions by Mr. Lewis was a “service” within the meaning of 570-7(A). The complaint states that the acceptance of this service is a violation of 570-7(A) by Mr. Feiner and Ms. Beville. The complaint also states that Mr. Feiner, Ms. Beville and Mr. Lewis by their actions aided each other in violating Section 570-7(A) and as a result violated Section 570-13 of the Ethics Code.

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3. The violation of Section 570-13 forbidding inducement of a person to violate a Code provision requires as a predicate an underlying code violation. In the present case the underlying violation would be the violation of Section 570-7(A). If there was no violation of Section 570-7(A) there could be no violation of 570-13. Therefore, an initial analysis must be made as to whether there was a violation of Section 570-7(A) as alleged in this complaint.

4. The focus of our analysis is on the main issue presented by this complaint, was the carrying of petitions by Mr. Lewis a “service” as contemplated by Section 570-7(A) of the Greenburgh Code of Ethics. We find that it was not.

5. The Bill of Rights, which consists of the first ten amendments to the U.S. Constitution, enumerates certain basic personal liberties. Laws passed by elected officials that infringe on these liberties are invalidated by the judiciary as unconstitutional. The Fifth Amendment to the Constitution, ratified in 1791, represents five distinct liberties that Framers attempted to safeguard from majoritarian impulses: (1) the right to be indicted by an impartial Grand Jury before being tried for a federal criminal offense, (2) the right to be free from multiple prosecutions or punishments for a single criminal offense, (3) the right to remain silent when prosecuted for a criminal offense, **(4) the right to have personal liberties protected by Due Process of Law**, and (5) the right to receive just compensation when the government takes private property for public use. The right to participate in the political process is a fundamental personal liberty. Any application of the Code that results in a curtailment of that right in any way could violate the right of Due Process and must be carefully examined.

6. In the present complaint there are no allegations that Mr. Lewis gathered signatures while acting in his capacity as Town Attorney. There are no allegations that he used the influence of his office in any way to implement the signing of the petitions on behalf of Mr. Feiner or Ms.

Beville. There are no allegations that Mr. Lewis gave legal advice as a service in relation to the collection of signatures. The allegation is that Mr. Lewis as a private citizen, not as Town Attorney, voluntarily gathered signatures for candidates he apparently intended to vote for. The Board of Ethics finds that this exercise of Mr. Lewis' personal liberty, or right, as a United States citizen to back the candidate of his choice is not a "service" as contemplated by Section 570-7(A) of the Greenburgh Code of Ethics.

7. Consequently, even if the above allegations are accepted as true, the Board finds no violation of Section 570-7(A). Since there is no violation of 570-7(A) there can be no violation of Section 570-13. The Board of Ethics declines to go to a Phase 1 level investigation. In accordance with the Town of Greenburg, NY Board of Ethics Internal Rules 6(a) a preliminary determination is made by the Greenburgh Board of Ethics to dismiss the citizen's complaint filed by Mr. Thomas Bock on August 16, 2013.

BY THE BOARD OF ETHICS
Adopted at the September 16, 2013 Meeting

Voting for: Mr. Eisen
Mr. Hopkins
Mr. Scott

Voting against: Mr. McLaughlin

Not Present: Mr. Constantine