

TO: Greenburgh Town Supervisor
Greenburgh Town Clerk

CC: Greenburgh Town Council

ADVISORY OPINION 2015-1 – Solicitation Letters Code Compliance

Background

Town of Greenburgh. Section 570-4A (1) (b) of the Greenburgh Town Code states that “no elected officer shall, directly or indirectly, solicit or accept any gift or item of personal or real property or a contribution or donation from any appointed officer or employee, and no elected officer shall, directly or indirectly solicit any gift or item of personal or real property or any contribution or donation from agency members.”

On April 24, 2015, Town Supervisor Paul Feiner wrote the following to the Greenburgh Board of Ethics:

Now that campaign season for the 2015 elections is approaching my re-election campaign committee is thinking of sending out some mass fundraising mailings to a large group of voters in Greenburgh. We will be purchasing the lists or using lists from my previous campaigns that were purchased from a political campaign firm. These lists were paid for by Friends of Paul Feiner.

After the last campaign the Board of Ethics advised me that my campaign had sent mailings to some members of the Board of Ethics seeking funds. Didn't get donations from members of the board (and I hadn't looked at the list I used), but it was considered a solicitation. This is contrary to the Ethics Code. After your ruling I contacted Ross Mailing. I asked them if I could give them a disc with names of people who I can't take contributions from along with the mailing list I'm using. They said they could delete the names from the mailing. I haven't done any fundraising since the 2013 elections.

My question: If town officials obtain a list of everyone we can't accept donations from—from the Town Attorney's office and if that list is given to a mailing house—and if the mailing house certifies that they can remove the names we can't take contributions from—would that be acceptable? I'd prefer not having to spend time looking at lists and determining who will or won't get fundraising mailings—and would rely on the mailing house to do the job they claim they can do.

This would make the process much easier. Please advise.

PAUL FEINER

On February 22, 2010, Mr. Feiner was found in violation of 570-4A (1) (b) when he solicited and accepted a contribution from a member of a Town Board (an agency member). The Board of Ethics did not fine or Mr. Feiner for that violation if he stated he would comply in the future. The Ethics Board at that time wanted that ruling to be “remedial not punitive.”

On December 13, 2013, in Ethics Board Opinion 2013-5 Mr. Feiner was again cited for violating Section 570-4A (1) (b) of the Greenburgh Town Code regarding the improper solicitation of campaign contributions in a fund raising letter sent to three members of the Board of Ethics. In his e-mailed response to the Board of Ethics in response to the complaint about the improper solicitations he stated:

- He had purchased the mailing list from an outside vendor and had used a different outside vendor to do the actual mailing. He said, "I do not know how many agency members {or} employees received it since I have not looked at the list."

In his December 2, 2013, appearance before the Board of Ethics Mr. Feiner further stated:

- That he did not dispute the essential facts of the case i.e. that he had sent a solicitation to a list which included certain agency members and possibly Town employees. The Supervisor stated that the mistake was not intentional and that he felt that a fine should not be imposed this time. He said that he would agree not to oppose a fine if he made the same mistake again in the future.

In this opinion no fine was assessed for the violation because Section 570-9C Town Code states that the imposition of a fine stipulates that a violation must have been done "willfully and knowingly," and that there was no evidence to indicate that Mr. Feiner's violation was willful or he had knowledge of the improper solicitations being made. That opinion went on to further state:

- Therefore, the Board of Ethics recommends that the Town Board ask Mr. Feiner to: 1) ensure that he comply with the Town Code in any future use of solicitation mailing lists; 2) implement controls designed to prevent inadvertent future violations. Such controls should contain, as a minimum, appropriate procedures and checklists to use when soliciting campaign contributions by the Supervisor and/or his campaign staff and 3) return any contributions received from prohibited sources as specified in Section 570-4 and/or Section 570-7. The Supervisor should make use of the list of individuals and entities from which contributions may not be solicited or accepted as specified in Section 570-7E. Any future violation by the Supervisor concerning solicitation is subject to being deemed "willful and knowing" by the Board of Ethics.

Opinions 2010-4 and 2010-4B further address and clarify the issues of agency members and their immediate families who can and cannot be solicited. In those opinions, it was stated that the law concerning soliciting uncompensated agency members applies only to agency members and does not apply to the spouse or other relatives of an agency member, unless that agency member is compensated by the Town.

Opinion

Delegation of fund raising and solicitation activities in political campaigns is very common at all levels of government. Candidates and their committees often depend

upon paid and unpaid campaign workers to solicit and accept contributions in the name of the candidate. This is an allowable decision for any person running for elective office who has the resources to use others to perform campaign tasks as long as the arrangement does not violate any laws. However the candidate does so at his or her own risk. A candidate's responsibility to meet the requirements of the code of ethics is not delegable.

If candidates, their campaign committees or designees solicit and accept contributions which violate regulations and laws concerning the solicitation and acceptance, the candidate and possibly others who are involved can be found in violation of the law. Finding of violations may include fines and other penalties to the extent allowed by law even if the violation was unintentional and not made by the person required to comply with the law.

Avoiding penalties or blame by delegating responsibility for compliance is not a valid defense.

Concluding Comments

This is the third Board of Ethics opinion since 2010 concerning fund raising violations of the same section of the Town Code. The Board of Ethics recommends that the Town Board treat this matter seriously and demonstrate that it will hold accountable all those covered by the Code regardless of their level or position in Town government.

BY THE BOARD OF ETHICS

Adopted at May 12, 2015, meeting

Voting for:

Hon. Freidman, Chair
Mr. Eisen
Dr. Hopkins, PhD
Dr. Sarcinella, EdD
Mr. Sganga, FACHE