

TO: Paul Feiner, Town Supervisor

CC: Greenburgh Town Board  
Greenburgh Town Clerk

**OPINION 2011-3**

On May 10, 2011, the Town Supervisor, pursuant to Section 11D(2) of the Code of Ethics, requested that the Board of Ethics give an advisory opinion as to a proposed arrangement involving a potential bidder who would, upon certain conditions, fund a Phase 1 environmental investigation. If the potential bidder who funds the Phase 1 investigation does not turn out to be the successful bidder, then either the Town or the successful bidder would be obligated to reimburse for the costs of the Phase 1 investigation.

On the assumption that this arrangement did not arise as a result of a solicitation by a public officer in violation of Section 4A(2) of the Code of Ethics or the comparable provision of state law, General Municipal Law Section 805a-1, and based on the accuracy and completeness of the facts presented to the Board of Ethics by the requesting official, and based under the assumption that this arrangement does not violate any New York state law relating to contracts entered into by a municipality, the Board of Ethics does not believe the Town's entering into this arrangement would be a violation of the Code of Ethics as long as the terms are clearly spelled out in a Town Board resolution (including the amount to be paid for the Phase 1 examination, the term that the potential bidder or his assignee would not be barred from bidding by virtue of the fact that he paid for the expenses of a Phase 1 testing, and the term that the potential bidder would have no say in the Town's selection of who performs the Phase 1 environmental investigation or the scope of the investigation). If the potential bidder (or his assignee) is to have, or is not to have, any special preference as a bidder by virtue of the arrangement, that should be specified in the resolution. If the potential bidder is to receive, or not to receive, interest if he gets reimbursed, that should be spelled out in the resolution. The resolution would need to be appropriately noticed (and, if the potential bidder were in litigation with the Town or had a material application before the Town, that should be stated). The resolution would need to be adopted at an open meeting. Prior to adoption, the public would need to have a reasonable opportunity to comment.

As noted above, the provisions of Section 4A(2) of the Code of Ethics with regard to improper solicitations would apply regardless of a Town Board resolution, as would the provisions of Section 7A of the Code of Ethics regarding solicitation/acceptance of political contributions. Depending on the amount at issue, the provisions of Section 10C of the Code of Ethics may also be applicable.

BY THE BOARD OF ETHICS  
*Adopted at May 18, 2011 Meeting*  
Voting For: Mr. Constantine  
Mr. Eisen  
Mr. McLaughlin  
Mr. Scott  
Mr. Sigal