

TO: Greenburgh Town Supervisor
Greenburgh Town Clerk

CC: Greenburgh Town Council

OPINION 2014-3

Background

This Advisory Opinion addresses an email received from Town Supervisor Paul Feiner dated March 27, 2014. Mr. Feiner requested that the Board of Ethics Board consider the definition of "Town" in 570-3 of the Greenburgh Town Code. Mr. Feiner stated that "For purposes of the Ethics Code, "Town" is defined to include "fire protection districts" and that if for ethics law purposes "Town" is defined to include fire districts, the conflict of interests rules in Section 570-4C and the anti-nepotism rules in 570-17 would apply to its "employees". Employee is another defined term in 570-3.

Mr. Feiner further requested the Board of Ethics to comment on "while fire districts may have the authority to establish their own ethics rules, that doesn't necessarily mean that fire district employees can not be subject to an ethics law. Public servants, as well as private professionals, are frequently subject to more than one ethics system. For example, as the Greenburgh Town Supervisor I am subject to at least two different sets of ethics rules, the local ethics law and the state ethics laws".

Opinion

In addressing Mr. Feiner's questions we have examined the relevant definitions. The scope of our reply is limited to the Code of Ethics as it applies to Fire Districts and their associated Fire Departments and/or companies. It does not address the applicability of laws other than the Code of Ethics with respect to Towns and Fire Districts. Also, our response does not address joint-fire districts since currently there are none within the Town of Greenburgh. The essential point in Mr. Feiner's inquiry is the difference between "Fire Protection District" and "Fire District". The definition of "Town" in the Greenburgh Code of Ethics includes Fire *Protection* Districts. It does not include Fire Districts.

New York State law does not allow towns to provide their residents with fire protection as a municipal function. Instead, fire protection is provided either by a fire district or through creation of a fire protection district.

Fire districts are autonomous public corporations, independent from the towns in which they are located, established for the primary purpose of providing fire protection and responding to certain other types of emergencies. They are usually governed by an elected board of fire commissioners and have the authority to levy taxes. Fire districts have the authority to incur debt generally without approval from any other governmental entity. Fire district boundaries sometimes cross town and county lines. Fire districts must file their own financial reports annually with Office of the State Comptroller (OSC).

Fire districts depend on their towns for initial establishment, expansion of district territory, and dissolution, but are otherwise thereafter autonomous political entities able to exercise only those specific powers granted to them by statute. Within Greenburgh there are three Fire Districts: Fairview, Hartsdale and Greenville.

Fire protection districts are administrative units of towns, not independent public corporations. Towns, on behalf of their fire protection districts, contract with fire companies, fire districts, cities or villages for the provision of fire protection and certain other services within the fire protection districts. The amounts paid under these contracts are assessed and levied on taxable property within the districts at the same time and in the same manner as town taxes. All budgetary controls and financial reporting are handled by town governments; fire protection districts are not required to file separate financial reports with the OSC. A fire protection district is established by a town board in order to contract fire protection services with any city, village, fire district or incorporated fire company.

Within Greenburgh there are seven Fire Protection Districts for which the Town contracts with an adjacent village to provide fire protection service to the Fire Protection District: Donald Park, Chauncey, Glenville, East Irvington, North Elmsford, West Elmsford and South Ardsley.

Based on the above distinction, it is the opinion of the Board of Ethics that the Greenburgh Code of Ethics does not apply to the three Fire Districts within the Town of Greenburgh or their associated Fire Departments or Fire Companies.

Concluding Comments

Mr. Feiner is correct that Fire Districts and Fire Department Officials and Employees are subject to applicable Ethics laws. The applicable laws for Fire Districts and Fire Departments/Companies are New York State Laws and the Code of Ethics adopted by the Fire District or Fire Department. Although located within the boundaries of one or more Towns, Fire Districts are not subject to the Code(s) of Ethics of said Town or Towns.

Fire Districts Code of Ethics

Section 806 of the General Municipal Law, as amended by chapter 238 of the Laws of 2006, requires the governing body of each fire district to adopt a code of ethics that applies to the officers and employees of the fire district, and to the volunteer members of the fire district fire department. This law took effect June 1, 2007. Commissioners who are elected officials are subject to conflict of interest statutes as set out in Article 18 of the General Municipal Law. The Office of the State Comptroller (OSC) has prepared a model Code of Ethics which those Boards who do not wish to draft their own may adopt.

The following website contains model codes of ethics for municipalities including fire districts: <http://www.osc.state.ny.us/localgov/pubs/ethics.htm>

Fire Company Code of Ethics

Effective June 1, 2007, all fire companies must adopt a code of ethics. The code of ethics must set forth reasonable standards of conduct for the fire company. A typical code of ethics may contain provisions relating to conflicts of interest, disclosure of personal financial interests in fire company business, confidentiality, gifts, and reimbursements. FASNY has published an edited version of the OSC model code of ethics that can be adapted for fire departments/companies.

The Greenburgh Board of Ethics does not know whether or not one or more of the three Fire Districts and their associated Fire Departments and/or companies located

within the Town of Greenburgh have adopted a Code of Ethics. We did not find mention of such on the websites of the three Fire Districts/Departments. A Fire Districts may, but is not required to, establish a Board of Ethics. In the absence of a Fire District Board of Ethics, an official or employee of a Fire District may seek advice from a County Board of Ethics, if one exists. However, such a Board would not be required to act on an ethics complaint from a resident, lessee or property owner within a Fire District against an official or employee of the Fire District unless the Fire District Code of Ethics made provision for such a complaint procedure (e.g. the Citizen Complaint Process contained in the Greenburgh Code of Ethics).

BY THE BOARD OF ETHICS

Adopted at May 12, 2014 Meeting

Voting for:

Ms. Friedman, Esq.
Mr. Hopkins, PhD
Mr. McLaughlin
Mr. Eisen