

To: Greenburgh Town Board

OPINION 2007-1

A member of the Town Board on August 21, 2007 requested an opinion from the Board of Ethics as to whether a \$ 500 contribution from the Chair of the Board of a not-for-profit corporation may be accepted. The individual who wrote the check is not a resident of the Town. The contribution is stated to be in the individual capacity of the not-for-profit's chair of the board.

The not-for-profit corporation has a contract with the Town. It is stated that the contract with the not-for-profit corporation expires several years in the future and the not-for-profit corporation does not have any application pending before the Town.

It is stated that the contribution was made by check dated before the new Code of Ethics was adopted, but was received after the new Code of Ethics was adopted.

Opinion

Section 7A(1) of the new Code of Ethics regulates acceptance of contributions. The Board of Ethics believes that the any deposit of a contribution after the new Code of Ethics became effective would be covered by the rules established by the new Code of Ethics, as that would be an act by the Town official after the new Code of Ethics which benefits the regulated Town official. The Code of Ethics does not regulate donors, and the Board of Ethics does not see any relevance to whatever date the donor writes on a check.

Although Section 7A(1) proscribes acceptance of contributions from parties with contracts with and applications before the Town, and their Affiliates, the definition of Affiliates in Section 3 does not include board members of a not-for-profit corporation. Thus, the Board of Ethics concludes that Section 7A(1) does not preclude acceptance of the contribution.

Section 4A(2) proscribes acceptance of money under circumstances where it "could reasonably be inferred that the [gift] . . . was intended to influence her/him in the performance of her/his official duties . . . or was intended as a reward for any official action on her/his part." We note that the contributor is not a resident of the Town, and thus is not a person with a normal interest in who is elected to a Town office by Town of Greenburgh voters. We also note that the contract with this not-for-profit corporation is highly controversial and there are published reports that the Town official to whom the contribution was made, with the support of the not-for-profit corporation, is seeking amendment of the arrangements surrounding the contract. From the facts before us, the Board of Ethics is unable to express an opinion as to whether acceptance of the contribution would violate Section 4A(2) of the Code of Ethics by the Town official. The Board simply cannot determine that one way or the other on the basis of the evidence before us. If the Town official wishes the Board of Ethics to pursue this, or if the Town official deposits the check and a citizen complaint is filed, then the Board of Ethics would undertake a detailed facts and circumstances investigation.

Pursuant to Sections 11E and F of the Code of Ethics, a copy of this Opinion is being submitted to the Town Board and filed with the Town Clerk.

BY THE BOARD OF ETHICS

Adopted at August 29, 2007 Meeting

Voting For: Mr. Jennings
Mr. McLaughlin
Mr. Sigal
Not present: Mr. Bunting
Mr. Robinson