

TO: Supervisor Paul Feiner
cc: Greenburgh Town Board
Greenburgh Town Clerk
Ms. Suzanne Berger, Chair Greenburgh Democratic Party Committee
Timothy Lewis, Town Attorney

OPINION 2010-2

On January 22, 2010, Town Supervisor Paul Feiner (“Supervisor”), pursuant to Section 11D(2) of the Town of Greenburgh Code of Ethics (“Code of Ethics”), requested an advisory opinion from the Board of Ethics as to whether Town Attorney Timothy Lewis can present comments about pending litigation to the Greenburgh Democratic Party Committee (“Democratic Committee”).

We understand from Supervisor Feiner's request that the appearance was not solicited by him. Rather, we understand that the genesis for this request has arisen from Suzanne Berger, Chair of the Democratic Committee, submitting a request to Town Councilman Kevin Morgan that the Town Attorney present to the Committee comments about pending litigations. By pending litigations, we assume what is meant are the following pending litigations which have recently become highly publicized: (1) lawsuit brought by Valhalla School District against the Town; (2) lawsuit brought by the former town comptroller, Mr. Kolesar, against the Town; and (3) lawsuit brought by Mr. Feiner against the Hartsdale Parking Authority (collectively, the “Three Lawsuits”).

Opinion

This opinion is predicated on certain assumptions. In addition to the assumption above, another assumption is that neither the Democratic Committee nor the Town Attorney will at the time of the Town Attorney's appearance solicit or accept any contributions or donations, thereby not potentially implicating the prohibitions contained in Section 4A of the Code of Ethics. Further, it is assumed that no contributions of money, services or things of value will be solicited or accepted at such time that the Town Attorney appears before the Democratic Committee, thereby not potentially implicating Section 7A of the Code of Ethics. Finally, it is assumed that the Democratic Committee, as a citizens group, is seeking information regarding certain pending litigations for which Mr. Lewis is providing legal representation, and that the Town Attorney's comments will be restricted solely to the factual and legal matters and the Town Attorney will not engage in campaigning for or support or criticize any Town elected official. Based upon these assumptions, the Board of Ethics finds that the Town Attorney's appearance before the Democratic Committee, pursuant to the request of the Chair of the Democratic Committee, to discuss the Three Lawsuits would not be a violation of the Code of Ethics.

This opinion is strictly limited to the Supervisor's request, and the above assumptions, and is not to be relied upon for any other purpose. The Board of Ethics is not hereby opining as to any ethical considerations that may be implicated by or arise from any of the Three Litigations, including but not limited to, the named parties or their capacities, the subject matter of such litigations or the allegations contained therein, or the choice of or acting as counsel for such litigations. Further, nothing herein addresses Mr. Lewis' legal and ethical obligations as an attorney to his clients, from whom Mr. Lewis will need to obtain consent before his presentation to the Democratic Committee.

BY THE BOARD OF ETHICS
Adopted at February 22, 2010 meeting
Voting for:
Mr. McLaughlin
Mr. Rivera
Mr. Sigal
(Mr. Scott was absent due to family emergency.)