

To: Mr. Hal Samis
cc: Greenburgh Town Board
Greenburgh Town Clerk
Ms. Judith Kessler (by mail)

OPINION 2010-4

Background

On January 20, 2010, Hal Samis, a resident of the Town of Greenburgh, submitted a Verified Complaint to the Board of Ethics pursuant to the "citizen complaint" procedure authorized by Section 11D(3) of the Code of Ethics adopted July 27, 2007.

The allegation of the complaint is that Paul Feiner, Town Supervisor, solicited and accepted a campaign contribution from Judith Kessler. In July 2009 the Town Board appointed Barry Kessler, the husband of Ms. Kessler, to the Board of the Hartsdale Parking Authority effective January 1, 2010. According to records of the New York State Board of Elections, a contribution of \$100.00 was made by Ms. Kessler to the supervisor on August 20, 2009.

Section 570-4A (1) (b) of the Code of Ethics provides 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". The Code of Ethics thus makes a distinction between appointed officers and employees, on the one hand, and agency members, on the other. Whereas solicitations are proscribed from both categories, acceptance is proscribed only from the former category and not from agency members. This section of the code is silent concerning solicitation of spouses or other affiliates of agency members, neither specifically including nor excluding them. However it does prohibit both the direct and indirect solicitation of agency members. Therefore, we focused on whether the solicitation of a donation from the spouse of an agency member serving in an uncompensated capacity would constitute an indirect solicitation of that agency member.

Unlike the accepting of contributions from, for example, appointed officers or employees, the Code of Ethics does not proscribe elected officials from accepting contributions from agency members. Agency members may make contributions, and the contributions may be accepted and retained by elected officials.

Opinion

With respect to the scope of the law concerning the non-solicitation of agency members, as stated in Opinion 2010-3, the Board of Ethics believes that there is a distinction to be made with respect to uncompensated agency members. The Board of Ethics does not believe that solicitation of a spouse of an uncompensated agency member is an indirect solicitation. Thus, as previously stated in Opinion 2010-3, unlike prohibitions on solicitation of appointed officers, employees, contractors and others with a direct financial interest with the Town, the law concerning 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.

Since the Code of Ethics does not prohibit the solicitation or receipt of contributions from spouses of agency members and since the Board of Ethics has not identified any section of the Code of Ethics implicated by instant complaint, the Board of Ethics has determined to dismiss the complaint under Section 5(c)(3) of its Internal Rules and Procedures.

BY THE BOARD OF ETHICS

Adopted at April 7, 2010 Meeting

Voting For: Mr. McLaughlin

Mr. Rivera

Mr. Scott

Mr. Sigal