

OPINION 2020-2

On June 26, 2019 a verified complaint alleging a violation of the Town of Greenburgh Code of Ethics (COE) was filed with the Town Clerk of Greenburgh by Hal Samis, a town resident. The Board of Ethics (BOE) received the complaint on July 23rd. The allegation of the complaint is that Mr. S. Kenneth Jones, Town Councilman, solicited and accepted campaign contributions in violation of the Greenburgh Town COE §570-4 under the heading "Standards of Conduct". Attached to the complaint was a seven-page list of contributions, which appeared to come from a search of government records.¹ A total of seventy-seven contributions to the 2019 campaign of Mr. Jones in varying amounts were listed. From this list Mr. Samis identified eight contributions, and he asked the Board of Ethics to;

"utilize its own knowledge of the Code, its investigatory powers and its determination to question the suitability, if not sustainability, of very generous contributions"

At its meeting on August 22, 2019 the BOE unanimously determined that the complaining party had standing, that the complaint was properly submitted to the Town and the complaint and the evidence submitted were sufficient to warrant further investigation by the BOE. The BOE determined that a Phase 1 investigation was in order.

Mr. Jones was advised of the Board's determination and offered Mr. Jones the opportunity to respond to the complaint. The BOE received Mr. Jones' response on September 12, 2019. In his response Mr. Jones addressed each contribution specifically referred to in the complaint. Mr. Jones denied that any of the contributions were accepted in violation of the COE with the exception of the Andre Early contribution. Mr. Jones admitted that as an appointed Officer Early's contribution cannot be accepted. Mr. Jones advised that he returned the contribution.

At their meeting on January 16, 2020² the BOE unanimously voted to prepare and serve a set of interrogatories on Mr. Jones and to send letters to certain contributors to Mr. Jones' campaign who might fall under definition of Agency member, Public Officer, Employee, Appointed Officer or Applicant. A total of six letters were sent. These six individuals were taken from the list of contributors attached to the Samis complaint. It should be noted that the people to whom letters were sent were selected based on the BOE's determination that they might fall under the categories listed above and included some of the donors highlighted by Mr. Samis.

¹ No objection to the list or its accuracy was submitted by Mr. Jones. The BOE therefore accepts the list without opining as its completeness or authenticity.

² It should be noted that the BOE had two members resign in September of 2019. The January 2020 meeting was the first time the BOE could meet with a quorum after the appointment of three new members.

The letters sought to determine whether or not each contribution made was unsolicited or the result of a solicitation by Mr. Jones, his campaign or anyone on his behalf. Responses to five of the six letters were received.

On February 28, 2020 the BOE received a response to interrogatories from Mr. Jones. In his responses Mr. Jones admits that his campaign did hold fundraisers, that invitations to the fund raisers were sent out, that fund raising solicitations were mailed and that *"Mistakenly, inadvertently invitations (and solicitations) went to some personal addresses of town officials and an attorney's office representing a town applicant. Volunteers were not cognizant of all names and positions held."*

Mr. Jones stated: *"Volunteers and myself checked and tried to scrub address lists free of all members of that class"*, referring to that class of people to which solicitations are prohibited.

Mr. Jones also stated that (1) the list of donors attached to the Samis complaint appeared to be accurate, (2) that some of the donors listed fall under the list of parties to whom solicitations cannot be made and that solicitations were sent to people on the list. Mr. Jones identified Andre Early (an appointed officer of the Town) and the Bozeman Law Firm, as parties who sent unsolicited campaign contributions and that both donations were returned. In his answer in paragraph 18 Mr. Jones denies that The Bozeman Law firm was an applicant as defined in COE § 570-3.

Mr. Early and The Bozeman Law firm had both been sent letters and both responded. They both confirmed that their contributions were unsolicited and that the contributions were returned by the Jones campaign.

The other three responses were from Ellen Hendrix, an officer appointed to the town board on May 22, 2019, Diana Juettner, who was and still is a town councilwoman and Ron's Trucking Corp, alleged by Mr. Samis at an open meeting of the BOE, to have a contract with the town. All three stated that their contributions were made in response to a solicitation from the Jones campaign.

The BOE unanimously determined that they could reach a decision based on the evidence before them. Pursuant to BOE Rules and Regulations Section 6 "Conducting Investigations of RRV" subsection b (2) and (3) Mr. Jones was advised that the BOE was prepared to render a decision and offered him the right to request a formal hearing under Phase 2. Mr. Jones waived his right to proceed to Phase 2.

OPINION

COE Section 570-4A (1) (b) provides that *"no elected officer shall, directly or indirectly, solicit or accept any gift or item of personal or real property or any 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"*.

In Samis v Feiner Opinion 2010-3 the BOE found that under COE Section 570-4A(1)(b) the prohibition on solicitation of agency members includes solicitations by mail, including mass mailings.

Despite the language set forth in Section 570-4 the members of this board feel that Sections 570-7(A)(1), D and E under "Prohibited Political Activities" are also applicable in this matter.

Andre Early

Andre Early at the time he made his unsolicited contribution was the Commissioner of Community Resources. Mr. Jones acknowledges that Mr. Early was an appointed officer and as such he could not accept a contribution from him whether it was solicited or not. This Board notes that the contribution was returned after the filing of this complaint. In fact, the check back to Mr. Early was dated September 11, 2019 the day before Mr. Jones' response to the complaint is dated. Acceptance of the contribution is a violation of COE section 570-7A (1). Mr. Jones did return the contribution in compliance with section 570-7E although it appears that it was beyond thirty-day time limit in subsection (3). This board has not inquired as to whether Mr. Early's name was on the list referred to in 7E at the time the contribution was accepted. The BOE has no information as to when Mr. Jones received knowledge of the Early contribution and when he first realized the contribution was improperly accepted. This board feels that the return of the contribution is sufficient to remedy this violation at this time.

The Bozeman Law Firm

The Bozeman Law firm made an unsolicited contribution to the Jones campaign of \$500.00 on May 24, 2019. The Bozeman Law Firm did confirm that the contribution was returned. The Bozeman status is a matter of dispute both in this complaint and in a companion complaint brought by Mr. Lederer-Plaskett. The debate centers around whether or not Bozeman was counsel for an applicant before the Town Board and what Mr. Jones' affiliation with the Bozeman firm, if any, was in and around May 2019.

Whether or not Mr. Jones was an employee, partner or counsel to the Bozeman firm when the contribution was made is not germane to the issue in this complaint. A donation made by a Town Board member's employer to his or her campaign is not a violation of the code of ethics assuming the employer is not an applicant to the town. What is germane is whether or not Bozeman was the attorney for an applicant at the time the contribution was made. Mr. Jones claims that the Bozeman firm was not representing an applicant before the Town Board and this is assumed to be disputed by Mr. Samis although not specifically stated.

Assuming arguendo that the Bozeman firm was representing an applicant COE section 570-4(D) and section 570-7 (A) (1) would be applicable and to some extent are in conflict. Section 570-7 (A) (1) states that no Public Officer shall directly or indirectly solicit or accept and contribution from any applicant. Section 570-4(D) states in substance that a Public Officer shall disclose any political contributions by any applicant or its legal representatives. However, no disclosure shall be required at any time under this subsection if such applicant's name is not on the list required by Section 7E. It shall not be a violation of this chapter if the recipient could not reasonably have known it was from an applicant, and proof of such contribution was returned within 30 days of the date the contributor's name appears on such list.

This conflict between the subsections of Chapter 570 is a matter for future reconciliation by the Town Board. This Board has no information stating that the Bozeman firm or any of the clients they represent are applicants. This Board cannot find a violation of the code of ethics under the facts and circumstances presented.

Ron's Trucking Corp.

Although not part of the written complaint and therefore not addressed by Mr. Jones in his answer, Mr. Samis in an open meeting did question the contribution of Ron's Trucking. Ron's Trucking did make a \$500 contribution to the Jones campaign on May 17, 2019. According to its response to the BOE letter the contribution was solicited. No evidence has been submitted to or discovered by the BOE which would justify including Ron's Trucking Corp. as a member of that prohibited class from whom Mr. Jones could not accept a contribution or to whom Mr. Jones could not solicit a contribution. The BOE finds no violation of the COE with regard to this contribution.

Ellen Hendrickx

Mr. Samis in his complaint identifies Ms. Hendrickx as an "Appointed" official. Ms. Hendrickx did confirm that her contribution was solicited by the Jones campaign. The donor list attached to the complaint states that the contribution was made on May 17, 2019. Ms. Hendrickx was appointed to the Town Board on May 22, 2019. Ms. Hendrickx was appointed to complete a term on the town board, which had become vacant.

This Board finds that at the time the contribution was made Ms. Hendrickx was not an appointed official and no evidence suggests that she would fall under any of the listed prohibited class. No evidence or allegation by Mr. Samis has been put forth to sustain a finding that the contribution was made in return for some action by Mr. Jones that would inure to the benefit Ms. Hendrickx. Under these circumstances the mere donation to a campaign should not give rise to a complaint being submitted to this board. The BOE finds no violation of the COE with regard to this contribution.

Diana Juettner

Diana Juettner made a contribution to the Jones campaign on May 22, 2019. According to Ms. Juettner the contribution was solicited. Ms. Samis makes no specific complaint about this contribution; however, she is listed as a contributor in the exhibit to Mr. Samis' complaint. At the time the contribution was made Ms. Juettner was a member of the Town Board. Under COE section 570-7(D) Mr. Jones could have accepted a contribution from Ms. Juettner even though she was an elected official if the contribution was made "*voluntarily and without solicitation*". There is no evidence to suggest that the contribution was not voluntary and it would only be speculation to assume the contribution would have been made without solicitation. The BOE finds that the contribution was made in response to a solicitation and that fact coupled with an admission by Mr. Jones that solicitations were unintentionally sent to the home addresses of some members of the prohibited class leads this Board to the conclusion that there was a violation of COE section 570-7(A)1 and (D). As this board determined in opinion 2010-3 the fact that the solicitation may have been unintentional does not absolve the candidate from taking all necessary steps

to avoid an improper solicitation. This solicitation of Ms. Juettner was especially egregious when you consider that Ms. Juettner sits on the same board as Mr. Jones.

With regard to the other contributors specifically referred to in Mr. Samis' complaint this board finds no evidence or allegation sufficient to warrant a finding of a violation of the COE.

RECOMMENDATIONS

To comply with the COE, Mr. Jones should:

- 1) Remove the names of any individuals or companies who would fall under the list of prohibited donors as defined in the COE, from any mailing list or lists used for solicitation.
- 2) Keep such list or lists updated. When an individual is appointed to an agency by the Town Board or other appointing authority, the name of that individual should be removed from such list or lists.
- 3) Refrain from using such lists for mailing solicitations until the names of any agency members have been removed.
- 4) Provide his plan for future campaigns to ensure that his campaign staff is made aware of the COE restrictions and the need to review mailing lists up to the time solicitations are mailed.
- 4) Report back to the BOE within 60 days that he has complied with the above four points and that he intends to maintain any mailing list or lists used for solicitations in compliance with the Town COE.

The BOE defers any recommendation of penalty for violation pending receipt of written confirmation from Mr. Jones that he has complied with the above recommendations. If, at its first meeting after the 60-day period, Mr. Jones states in writing that he has complied with the above recommendations, the BOE will not recommend that the Town Board impose a financial or other penalty. On the other hand, if Mr. Jones does not respond or responds that he has not complied with the above recommendations, the BOE will then consider recommending that the Town Board impose a penalty for the above violation.

BY THE BOARD OF ETHICS

Adopted at May 21, 2020 Meeting

Blase Spinozzi, Chairman

Trudy Holand, Secretary

Timothy Hays, Member

Hon. Doris Friedman, Member

David Schwartz, Member