To:  Greenburgh Town Board  
cc:   Greenburgh Town Clerk  
       Greenburgh Town Attorney  

REPORT II ON ACCEPTANCE OF GIFTS BY THE TOWN

I. BACKGROUND AND ANALYSIS

This report is issued in accordance with Section 570-11H of the Town Code of Ethics. Among other things, this Section authorizes, the Board of Ethics, at its discretion, to render reports and recommendations to the Town Board for appropriate action respecting unethical practices in violation of the Code of Ethics or any statute, rule or regulation relating to conflicts of interest, or ethical conduct.

On July 29, 2009, the Board of Ethics sent a Report to the Town Regarding Accepting Gifts to or for the benefit of the Town of Greenburgh. This Report was based on relevant New York State Laws, Town of Greenburgh Laws, and New York State Ethical Rulings. The Report concluded, in summary, that any official action of the Town Board which culminates in the acceptance of a gift to or for the benefit of the Town at a meeting conducted pursuant to and in accordance with the requirements of the New York State Open Meeting Law does not violate either New York State or Town ethical laws, if the public has a reasonable opportunity to comment on the proposed gift. With respect to proposed gifts where the donor is in litigation with the Town, or is a lobbyist or is seeking an approval or permit from the Town, the public should be apprised of the fact and be able to address the issue of acceptance as a separate matter (and not be required to bundle their comments on the gift with other agenda items). With respect to proposed gifts where the donor is neither in litigation with the Town, nor is a lobbyist nor is seeking an approval or permit from the Town, the public should be permitted to address the issue of acceptance in the time allotted to members of the public to comment on agenda items and other matters.

Local restaurants and other retail food establishments provided food at no cost to the Town for the annual New Residents/New Businesses/Volunteer Appreciation Reception which was held on May 15. The Agenda for the May 9 Town Board meeting, under Supervisor & Town Council Reports/Announcements stated that a formal resolution accepting these donations would be on the agenda of the next Town Board meeting which was scheduled to be held and was held on May 23. However the resolution was not on the agenda of the May 23 meeting or, to the best of our knowledge, of any subsequent Town Board meeting.

The authority for Town Boards, under law, to accept gifts on behalf of a town derives from New York State Law (Section 64(8)). It is the opinion of the Board of Ethics that under New York State Law gifts should be accepted by a resolution of the Town Board prior to their physical receipt or use. The Board of Ethics recognizes that in rare and unusual circumstances it may be necessary to receive donations prior to their formal acceptance by the Town Board (e.g. the receipt of donated food, cots, and medical supplies in a natural disaster, involving the provision of emergency shelter to citizens at
or on Town properties). Even, here, however, applicable law must be followed (N.Y. EXC. LAW § 24: NY Code - Section 24: Local state of emergency; local emergency orders by chief executive). The receipt of donated food to a Town sponsored event does not fall into the emergency category. Generally, events are known well in advance. The planning process for them should incorporate the required approval by the Town Board.

The 2011 referral from the Town Board to the Ethics Board of proposed amendments to the Code of Ethics contained language which would allow approval of a gift “….by a resolution at a Town Board meeting within thirty (30) days of receipt” . In its response to the referral, the Board of Ethics did not support this proposed amendment relating to “after the fact” approval. Receipt of a gift before approval by the Town Board raises the question of who in Town Government could receive a gift on behalf of the Town without approval by the Town Board (e.g. the Town Supervisor, one or more members of the Town Council, appointed officials, employees). What would be the basis for receipt? The grant of authority to accept also implies the authority not to accept. However, if a gift has been received from a donor prior to formal acceptance by the Town Board it may not be feasible or possible to return it if it is not subsequently accepted by the Town Board. Items may have been consumed or used or the donor may not want them back. The proposed 30 day provision would apply not just to food but to all categories of donations (e.g. money, vehicles, real estate, furniture, equipment).

New York State law allows a local ethics code to be stricter but not more lax than the New York law. If the proposed 30 day amendment is less strict than New York State law, the Board of Ethics, in determining violations, would be obliged to follow New York State law. Thus, Town officials and employees might be mislead.

II. RECOMMENDATIONS

1. The Board of Ethics recommends that the Town Board establish planning, administrative and control procedures which ensure that the Town Board accepts gifts prior to receipt and which give interested citizens the opportunity to speak for or against acceptance at an open Town Board meeting prior to formal acceptance by the Town.

2. The Board of Ethics recommends that the Town Board not include in the amendments to the Code of Ethics a provision for acceptance of a donation after its receipt.

BY THE BOARD OF ETHICS
Adopted at June 13, 2012 meeting

Voting for:
Mr. Eisen
Mr. McLaughlin, Chair
Mr. Scott

Not present:
Mr. Constantine
Dr. Hopkins, PhD