To: Supervisor Paul Feiner
Greenburgh Town Council

cc: Greenburgh Town Clerk

BOARD OF ETHICS OPINION 2013-5

Regarding Campaign Solicitation letter to Agency Members

This Board is acting pursuant to Town Code Section 570-11H and Board of Ethics Internal Rule 5. This opinion concerns a recent fundraising letter sent by Town Supervisor Paul Feiner (the Supervisor) to certain residents within the Town of Greenburgh. Section 570-4A (1) (b) of the Greenburgh Town Code states that “no elected officer shall, directly or indirectly, solicit or accept any gift or item of personal or real property or an 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”.

This opinion should be read in conjunction with Opinion 2010-3 concerning the solicitation of a member of a Town Agency. While there may be some differences in the specific circumstances, the essential elements of that Opinion are relevant here.

In October 2013 Mr. Feiner sent a fundraising letter, attached as Exhibit 1, to a selected list of households which had either an Irvington, Hastings or Hartsdale ZIP code. Three members of the Board of Ethics received a copy of the fundraising letter. At its October 30, 2013 meeting, the Board of Ethics initiated an investigation of this matter as a potential violation of the Town Code. On November 8, 2013 the Board of Ethics sent an email inquiry to the Supervisor concerning the circumstances surrounding the mailing of the fundraising letter. The Supervisor was offered the opportunity to appear before the Board of Ethics. The Supervisor responded to the information request by email and stated that he did wish to appear before the Board of Ethics.

In his email response the Supervisor informed the Board of Ethics that he had purchased the mailing list from an outside vendor and had used a different outside vendor to do the actual mailing. He stated “I do not know how many agency members {or} employees received it since I have not looked at the list”.

On December 2, 2013 Mr. Feiner appeared before the Board of Ethics. He waived his right to an attorney and to a public hearing. The hearing was held in executive session. The Supervisor did not dispute the essential facts of the case i.e. that he had sent a solicitation to a list which included certain agency members and possibly Town employees. The Supervisor stated that the mistake was not intentional and that he felt that a fine should not be imposed this time. He said that he would agree not to oppose a fine if he made the same mistake again in the future. The Board of Ethics has not reviewed the mailing list used for the solicitation and, therefore, does not know whether, and if so the extent to which, the solicitation was sent to Town employees or additional agency members. However, it is reasonable to assume that such individuals may also have received the solicitation.
OPINION AND RECOMMENDATION

Based on the known receipt of the solicitation by at least three agency members and the Supervisor’s written and oral statements, the Board of Ethics finds that the Supervisor violated Section 570-4A (1) (b) of the Greenburgh Town Code. Considering that this is the second violation of Section 570-4A (1) (b) by the Supervisor, the Board of Ethics was unanimous in its initial assessment that this violation warranted the recommendation of a fine. However, according to Section 570-9C, the imposition of a fine stipulates that a violation must have been done “willfully and knowingly”. It is the opinion of the Board of Ethics that there is no evidence to contradict Mr. Feiner’s statement of mistake and lack of intent and therefore his actions, while careless and possibly negligent, do not reach the standard of “willfully and knowingly”. Therefore, the Board of Ethics recommends that the Town Board ask Mr. Feiner to: 1) ensure that he comply with the Town Code in any future use of solicitation mailing lists; 2) implement controls designed to prevent inadvertent future violations. Such controls should contain, as a minimum, appropriate procedures and checklists to use when soliciting campaign contributions by the Supervisor and/or his campaign staff and 3) return any contributions received from prohibited sources as specified in Section 570-4 and/or Section 570-7. The Supervisor should make use of the list of individuals and entities from which contributions may not be solicited or accepted as specified in Section 570-7E. Any future violation by the Supervisor concerning solicitation is subject being deemed “willful and knowing” by the Board of Ethics.

CONCLUDING COMMENTS

This is the second violation of the same section of the Town Code by the Town’s highest official. The Board of Ethics recommends that the Town Board treat this matter seriously and demonstrate that it will hold accountable all those covered by the Code regardless of their level or position in Town government.

BY THE BOARD OF ETHICS

Adopted at December 2, 2013 Meeting

Voting for:
Mr. Constantine
Mr. Eisen
Mr. McLaughlin
Mr. Scott
Dr. Hopkins, PhD

Exhibit 1 Fund Raising Letter
FROM PAUL FEINER
October 2013

Dear Friends:

I STILL NEED YOUR HELP! Although I won the Democratic primary election, my opponent continues his mean-spirited campaign of personal attacks against me in the press and other public media. My team and I are still working overtime to respond.

I need your financial support now more than ever so that we can keep Greenburgh one of those rare places where government comes to you when you need help and Town-wide major decisions are made independently, based upon the best interests of our residents. Decisions in Greenburgh are not made by the special interests.

Thanks to your past support, Judith and I won our primaries on Tuesday, September 10 for the upcoming two-year term. Costing $60,000 (my opponent spent about the same), it was one of the most expensive campaigns I've ever run. Thanks to your past donations, I was able to counteract the ruthless attacks against me by highlighting my real record and exposing the agenda behind my opponent's statements.

The primary fight has depleted my campaign funds to the point where I appear vulnerable. This can only encourage my detractors to redouble their efforts and their funding of challengers. The Town's ethics laws prohibit incumbents like me from accepting contributions from those who have applications before the Town (or business with the Town). Challengers (except Town employees) do not have to comply with these laws.

Being Town Supervisor is not just a job for me; it's my passion. I believe in government transparency, soliciting input from residents and other experts and really listening to them. I combine that with creative problem solving and put the best ideas and innovations from around the country to work in Greenburgh.

I dedicate myself anew each year to making Town government even more open and responsive to your needs. I provide the personal service you and all our residents deserve. I also reach out to assist those facing personal challenges in this tough economy. I work to preserve our green spaces and reduce Greenburgh's impact on the environment. My quest continues to find ways to improve our quality of life.

Any contribution you can offer is greatly appreciated. Please help restore my campaign fund so that I can continue to serve you and your family. Feel free to contact me anytime, through my website www.paulfeiner.com, my email paul@paulfeiner.com or call me at home 914-478-1219. Thanks very much,

Paul Feiner

Please find a summary of some recent highlights on the reverse side.