

TO: Greenburgh Town Supervisor
Greenburgh Town Clerk

CC: Greenburgh Town Council

OPINION 2012 -1

Background

This Advisory Opinion addresses two emails received from Town officials regarding Report II on Acceptance of Gifts. In response to the issuance of the report, the Board of Ethics received an email dated July 3, 2012 from the Town Clerk in which the Clerk requested flexibility in the process of accepting food donations for Town-sponsored events. The Town Clerk stated that, often, when attempting to secure food donations for a town event, the donations may not be finalized prior to a scheduled Board Meeting allowing for public comment.

The Town Clerk suggested that it is possible to state in a resolution **prior** to an event where food has been requested that “The Town **has requested** food donations from the following food establishments...” She stated that “this would allow the public to comment on the potential donations. However, this information may even change between the announcement/resolution and the actual event due to the possibility of a prospective donor declining and the Town needing to reach out to a replacement donor.”

In an email to the Board of Ethics dated July 4, 2012 the Town Supervisor expressed support for the request for flexibility made by the Town Clerk and suggested that the Town Board resolution prior to the event could indicate if there were any restrictions on the donations the Town Board would accept. The Supervisor stated that after the event is held the Town Board could approve another resolution formally accepting the donations (from donors that were not included in the initial resolution).

Opinion

This opinion takes into consideration several factors which distinguish the subject situation from the general rule of formal acceptance prior to receipt of a gift: 1) Events are time dependent. Cancellation of a donation of food by a potential donor is not usually sufficient reason to cancel or postpone an event. 2) Ready to serve food of the type provided at events frequently cannot be ordered in advance and stored. 3) Food is a perishable and consumable item which unlike gifts of cash, securities, land buildings, or vehicles, does not become an asset of the Town which is recorded and tracked through formal accounting records. For food gifts, however, documentation should indicate the person(s) who asked for and received the donation on behalf of the Town. In view of the foregoing, it is the opinion of the Board of Ethics that flexibility is warranted in the case of food donations for Town-sponsored events in accordance with the following process:

1. Food donations for a specific event are to be accepted by a resolution of the Town Board at a Town Board meeting held prior to the event. The resolution should identify the potential donor or donors who have been or may be asked to provide food for the event. For the purposes of this opinion food includes non-alcoholic beverages.

2. If it becomes necessary to reach out to a potential donor not identified in the Town Board resolution, the Town may do so provided that the additional donor is neither an applicant before the Town nor in litigation with the Town.
3. The donations by the additional donor must be accepted by resolution at the first Town Board meeting following the event unless circumstances dictate that it be accepted at the second Town Board meeting following the event.

Concluding Matters

The above opinion is narrow in scope and is applicable only to the circumstances of food donated for a Town-sponsored event. The Town should make best efforts to minimize the need to use this flexibility through careful planning and early vetting of potential donors prior to events.

BY THE BOARD OF ETHICS

Adopted at July 25, 2012 Meeting

Voting for:

Mr. Eisen

Dr. Hopkins, PhD

Mr. McLaughlin

Mr. Scott

Not Present:

Mr. Constantine