

To: Mr. Hal Samis  
Supervisor Paul Feiner

cc: Greenburgh Town Board  
Greenburgh Town Clerk

**OPINION 2010-5**

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 complaint states that Town Supervisor, Mr. Paul Feiner, solicited and accepted contributions "from Teamsters Union, Local 456." The complaining party alleges that this violates 570-4A(2), which he describes as "gifts and solicitations intended to influence in the performance of his official duties." The complaint does not refer to Section 7A(3), which prohibits soliciting or accepting any contribution "from any person or Legal Entity, or any Affiliate thereof, having a Contract with the Town."

Attached to the complaint are two pages from the NYS Board of Elections website, listing 6 contributions from "Teamsters Union Local 456 PAC". Each contribution is for \$ 500. Four of the contributions are listed as having occurred after the adoption of the new Code of Ethics on July 27, 2007, and two of the contributions are listed as having occurred before that time. There is no evidence before the Board of Ethics as to any contribution directly from the Union Local, as alleged in the complaint.

At the February 22, 2010 meeting, the Board of Ethics commenced a Phase 1 investigation.

Opinion

Political action committees ("PACs") are generally creatures of Federal election laws. In a recent case under the Federal election laws, the Supreme Court stated that "[a] PAC is a separate association from the corporation [to which it is related]." Citizens Union v. Federal Election Commission, 130 S. Ct. 876, 897 (2010). The same appears to be true under the Town of Greenburgh Code of Ethics, and that appears to have been a conscious decision of the Town Board.

Nothing in the Code of Ethics contains any direct prohibition regarding solicitation of or contributions by PACs. Political action committees are specifically excluded from the definition of Legal Entity in Section 3 of the Code of Ethics ("Legal Entity - . . . and any other entity recognized by the State of New York, but not including a political party or a political action committee"). Moreover, under the definition of Affiliates in Section 3, affiliation with respect to Legal Entities is defined with reference to percentage of ownership and thus PACs are not affiliated persons under the Code of Ethics.

Since there had been public discussion of including, or excluding, PACs in the amendments to the Code of Ethics when the Town Board referred proposed amendments to the Code of Ethics to the Board of Ethics on March 28, 2007, the Board of Ethics discussed the issue in its May 11, 2007 report (Town website, Board of Ethics page, "Important Documents and Reports"):

"The Board of Ethics notes that there has been public discussion of prohibiting Town officials and candidates from accepting contributions from political parties and political action committees which have received contributions from applicants and parties with Town contracts . . . ." \* \* \*

[T]he Board of Ethics believes that activities of political parties and political action committees are more in the realm of activities governed by election laws, as the activities of political parties and political action committees raise broad issues of election law policy within a democracy. \* \* \*

[T]he Board of Ethics believes . . . (ii) there are cogent policy grounds for the Town Board's decision not to cover determinations by political parties and political action committees as to contributions they may make to Town officials who are candidates for public office."

Fewer than 2,000 PACs, of the millions of corporations and other legal entities such as labor unions, exist. They are "burdensome alternatives; they are expensive to administer and subject to extensive regulation." Citizens Union, 130 S. Ct. at 897.

As noted above, the Code of Ethics does not contain any reference to PACs, other than their exclusion from the definition of Legal Entity, and PACs do not come with the Code of Ethics definition of Affiliates. Therefore, the Board of Ethics believes that the Code of Ethics does not apply to solicitations and contributions from PACs. Regulation pertaining to PACs appears to be within the realm of election laws, not ethical laws.

Since the Board of Ethics has not been able to identify any section of the Code of Ethics potentially implicated by the instant complaint, the Board of Ethics has determined to dismiss the complaint under Section 6(b)(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