

TO: Greenburgh Town Supervisor

CC: Greenburgh Town Council
Greenburgh Town Clerk

OPINION 2014 -7

Background

This Advisory Opinion addresses a request for opinion from Town Supervisor Feiner concerning the sending out of a fundraising flyer in an e-blast. The flyer would also be posted on the Town website. For the period June 23, 2014 through June 27, 2014, "five BELoW", a new store at the Crossroads Shopping Center, offered to give the LOIS BRONZ CHILDREN'S CENTER (LBCC) 10% of its receipts from customers who present the flyer to the cashier upon checkout. Mr. Feiner also asked for confirmation that there was no prohibition to his posting the fundraising offer and flyer on his facebook, twitter, and linked-in pages. Mr. Feiner had received the request from LBCC in the afternoon of June 23, 2014 and sent the request to the Board of Ethics later that afternoon. In view of the fact that the five day fundraising promotion period had already begun, Mr. Feiner requested a response as soon as possible. The Board of Ethics determined that the request was time sensitive and at 10:00 pm on June 23, 2014 issued an accelerated advisory opinion in advance of this formal opinion.

Opinion

The several components to the request will be addressed separately:

Posting the fundraising offer and flyer on his personal facebook, twitter, and linked-in pages. The Board of Ethics finds no prohibition to the posting of the fundraising offer and flyer on Mr. Feiner's personal Facebook, twitter, and linked-in pages.

Use of e-list. Section 570-4A (3) of the Town Code states "Nothing in 570-4 shall prohibit soliciting or accepting gifts or donations for fundraisers for the benefit of Internal Revenue Service Section 501(c) (3) organizations, provided that a Public Officer cannot solicit any such gift from an Employee. Although the Lois Bronz Children's Center is a 501(c) (3) organization, the retail store, "five BELoW" is not. Since the primary customer relationship is with the retail store, it is the opinion of the Board of Ethics that the charitable exception for 501(c) (3) organizations does not apply and the Town's e-list may not be used for this event. If the solicitation were directly for the LBCC, the use of the e-list would be permissible so long as any Town employees on the e-list are deleted for the purpose of the communication. The Board of Ethics has asked the Town Supervisor for information concerning the e-list which when received and analyzed may lead to some flexibility with respect to the presence of employees on the e-list.

Posting on Town website. It is the opinion of the Board of Ethics that the fundraising offer and flyer may not be posted on the Town website. Section 570-6 of the Town Code states "No Public Officer, Employee or Agency Member shall request, obtain, permit the use of or use Town-owned vehicles, equipment, buildings, material, or property or Town-funded services for personal convenience, interest, use or benefit or the personal convenience, use or benefit of others, except when such services are available to the public generally or are specifically provided by the Town Board for the use of such Public Officer, Employee or Agency Member in the conduct of official business". In the opinion of the Board of Ethics, to qualify as official business, the use of town-owned assets or town-funded services to distribute or post promotional offers for private entities must be based on a general authorization by the Town Board and governed by fair and consistent

standards. The Town Board may wish to examine as a matter of policy whether it wants to consider the distribution of promotional offers as official business and, if so, establish the circumstances under which it would do so and also to establish fair and consistent standards. The absence of such standards could lead to the perception of unequal treatment by businesses. Unless and until the Town Board has authorized the use of Town assets and services for such a purpose and established relevant standards, the Town should not distribute nor post promotional offers for private entities. The following citation from New York State General Municipal Law may be of interest to Town officials. The Board of Ethics is neither advocating for or against the adoption of the local law mentioned therein.

General Municipal Law

§ 99-v. Veterans affairs; display of events. Each county, city, town or village may adopt a local law to provide a bulletin board to be conspicuously displayed in such county, city, town or village building holding its local legislative body or municipal offices. Such bulletin board shall be used by veterans organizations, the New York state division of veterans' affairs, the county veterans service agency or city veterans service agency to display information regarding veterans in such county, city, town or village. Such information may include, but not be limited to, benefits or upcoming veterans related events in the community.

The Board of Ethics believes that a Website bulletin board would meet the definition of bulletin board under Sec 99-v. and may be applicable beyond events for veterans. However, it is recommended that the Town Board ask Town Counsel to research the issue.

BY THE BOARD OF ETHICS

Adopted at June 23, 2014 Meeting

Voting for:

Mr. Eisen
Ms. Friedman, Esq.
Dr. Hopkins, PhD
Mr. McLaughlin