

ADVISORY OPINION 2022-2

On or about January 5, 2022 the Board of Ethics received an email request for an advisory opinion from Town Clerk Judith Beville.

Judith Beville asked if Town of Greenburgh personnel, more specifically her office, could conduct a fund raiser in an effort to raise the funds needed to expand a part-time employee's position to a full-time position, in order to improve services to the public. After deliberation the Board of Ethics posted a draft opinion in advance of the March 24, 2022 public meeting, at which time a formal vote for the approval of the opinion as written would be taken. On March 22, 2022 Judith Beville asked to address the Board of Ethics at its March 24th meeting.

At the March 24th meeting Judith Beville was given an opportunity to speak in support of her request. Ms. Beville did address questions raised by the Board in the draft opinion, which were as follows: A) The request suggested a specific amount needed but did not say whether the amount would cover all costs including withholding taxes and benefits, which would be incurred by the town. B) The request did not discuss whether the fund raiser would be an annual event. C) The request also did not cover what would happen if the fund raiser only collected a portion of the amount needed.

At the meeting Ms. Beville did address the questions posed above as well as a number of other questions posed by board members Spinozzi and Hays and Counsel Malara.

The subject matter posed in this request has been addressed by the Board of Ethics in similar matters on more than one occasion. See Advisory Opinions 2014-1, 2014-5, 2014-7, 2015-2. The 2014-1 opinion contains an in-depth analysis regarding a municipality soliciting funds.

The majority of Ms. Beville's comments concerned what she believes the reasons were for the Town Clerk's budget not being increased. The Board of Ethics does not believe the how, the why and the amounts involved in the town's budget process are germane to the issue at hand, which is the question of conducting a fundraiser. This position of the Board of Ethics was conveyed to Ms. Beville before her comments began.

Ms. Beville stated that she did not think about what the \$40,000.00 amount she was seeking would include. She assumed it would include everything based on other budget increases in the town.

Ms. Beville commented that the town has accepted donations in the past. The example given by Ms. Beville appears to have been a donation from an outside organization which was accepted by the town by resolution of the town board. See Code of Ethics §570-4(2)

In response to questions about the fundraising process Ms. Beville stated that it would be her office that would make the solicitation, she would get the solicitation out through the town's e-list and the money would be collected by her office.

The distinction between the town accepting gifts and the town soliciting gifts is crucial. In our opinion 2014-1 New York State Town law and the Tug Hill Commission report regarding this distinction were cited.

And is now repeated as follows:

The Tug Commission report updated on 2016 states: "There is no authority for a municipality to solicit monetary or material gifts, either by advertisement or otherwise. Nor may they conduct fundraising activities. According to Office of the State Comptroller opinions No. 74-1102, 1974, and No. 77-292, 1977, such activity would be contrary to public policy and, therefore, not a proper municipal function."

Section 64(8) of the NYS Town Law permits a town board, "Subject to law and the provisions of this chapter, the town board of every town . . . 8. May take by gift, grant, bequest or devise and hold real and personal property absolutely or in trust for parks or gardens, or for the erection of statues, monuments, buildings or structures, or for any public use, upon such terms or conditions as may be prescribed by the grantor or donor and accepted by said town, and provide for the proper administration of the same."

Although NY General Municipal Law (section 6-u) carves out an exception to the no solicitation rule, the exception applies to charitable gifts and not for the purpose involved in the request before this board. When Ms. Beville was asked by the Chair how she would get around the restrictions of the General Municipal Law, she responded that she did not know of any legal grounds which would justify her request.

Opinion

It is the opinion of the Board of Ethics that neither the applicant for this opinion nor the Town have the authority to solicit private funds through fundraisers, sponsorships or otherwise to increase the working hours of a town employee or to increase the operating budget of a particular department.

In the 2014-1 advisory opinion this board stated:

"The above opinion is broad in scope and is applicable to other situations involving solicitation by the Town including, but not limited to, the solicitation of food for town events. However, should a local private civic group, for example, rather than the town itself or any of the town's departments or agencies, sponsor fund-raising activities or solicit donations for use by the town, contributions made to the town by such groups of moneys it collected could be accepted by the town as a gift.

In light of the fact that the Comptroller's opinions date to the 1970's, the Town Board may wish to pose their question to the New York State Comptroller's office for an advisory opinion. The Board of Ethics is basing its opinion on those rulings and the report cited herein. If the Town does decide to seek an opinion from New York State, the Town should comply with this Board of Ethics opinion and previous New York State opinions until a response is received from New York State.

Given the broad scope of this opinion, the current Greenburgh Code of Ethics should be modified to bring it into compliance with New York State law as expressed in the referenced New York State Comptroller's Opinions and the Tug Hill Report."

BY THE BOARD OF ETHICS

Adopted at April 28, 2022 Meeting

Voting for: Mr. Spinozzi, Chair
Ms. Holand, Secretary
Ms. Pizzuti
Mr. Hays