

**INCORPORATED VILLAGE OF PM
BOARD OF TRUSTEES
REPORT OF INVESTIGATION**

March 16, 2009

Respectfully Submitted:

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PROFESSIONAL BACKGROUND

I am an attorney and certified public accountant, and a member of the Roslyn firm of Leventhal and Sliney, LLP. I serve as Village Attorney for the Village of Muttontown, counsel to the Suffolk County Ethics Commission, counsel to the Ethics Boards of the Towns of North Hempstead, Southampton and Putnam Valley, and counsel to the Planning Board and Ethics Board of the Village of Rockville Centre. I have served as ethics counsel to the County of Nassau, the Village of Lynbrook, the Roosevelt Public Library, the Westbury Water District and the Eastchester Fire District.

I served as chair of the bi-partisan Nassau County Board of Ethics for six years, as a member of the Board for twelve years, and as counsel to the Board for one year. My advisory opinions have been circulated by the New York City Conflicts of Interest Board for use by its staff attorneys.

I have lectured extensively on the subjects of government, legal and corporate ethics, including at meetings and conferences sponsored by the New York State Association of Counties, the Association of Towns of the State of New York, the New York Conference of Mayors and Municipal Officials, the American Bar Association, the New York State Bar Association, the Nassau County Bar Association, and the Practicing Law Institute; to numerous municipalities and local bar associations; and to public and private sector attorneys at continuing legal education programs.

My articles on government ethics have appeared in the New York State Bar Association's state-wide magazine, the *Municipal Lawyer*; the newsletter of the Association of Towns of the State of New York, *Talk of the Towns*; and in the Nassau County Bar Association's newspaper, the *Nassau Lawyer*.

I am an invited Fellow of the American Bar Association, an invited member of the New York State Bar Association's Committee on Attorney Professionalism, and co-chair of the Ethics and Professionalism Committee of New York State Bar Association's Municipal Law Section. I am an elected director of the Nassau County Bar Association, and was awarded the 2006 Directors' Award for my work as founding chair of its Finance Oversight Committee. I am a past chair of the Nassau County Bar Association's Municipal Law Committee.

CERTIFICATION

This is to certify that neither my firm nor I are related to any of the parties referred to in this report. Further, neither my firm nor I have any present or intended financial interest in this matter beyond the fees due for professional services rendered in connection with this investigation and report, and possible subsequent services which may be required related to this matter. I certify that my fees are not contingent fees but are based upon the time expended on the services provided to the Village of PM in connection with this investigation and report.

Dated: Roslyn, New York
March 16, 2009

Steven G. Leventhal

**INCORPORATED VILLAGE OF PM
BOARD OF TRUSTEES
REPORT OF INVESTIGATION**

QUESTIONS PRESENTED

I have been retained by the Incorporated Village of PM (the “Village”) to serve as special counsel in connection with an Ethics Complaint dated February 24, 2009.

The Complaint alleges that the Mayor violated Chapter 27 (Ethics, Code of) of the Village Code, section 27.3 (Standards of conduct) subsection “A” (Gifts) in that her campaign committee, Friends of BD, received campaign contributions from TK, a partner in the firm that serves as Village Attorney, and from his wife, EK; from TPH and TMH, members of a limited liability company that leases property to the Village; from H&K, a law firm whose member, SK, is employed as Village Prosecutor; from MS, an attorney that previously represented litigation adversaries of the Village; and from PF, commissioner of an inter-municipal emergency planning agency of which the Village is a dues paying member.

The complaint further alleges that the Mayor violated subsection “E” (Disclosure of interest in legislation) of Code of Ethics section 27.3 by failing to disclose her social relationship with Mr. K when the Board of Trustees appointed his firm as Village Attorney; and by failing to disclose that a commissioner of the inter-municipal emergency planning agency was a contributor to her campaign committee when the Board of Trustees approved Village membership in the agency¹.

¹ This question assumes an erroneous fact. Membership in the inter-municipal emergency planning agency was approved two days before the Commissioner contributed to the campaign committee.

SCOPE OF REVIEW

The Village Code of Ethics provides at section 27.7 that:

The Mayor, as Chief Executive Officer of the Village, shall receive any complaint concerning provisions of... [the Code of Ethics] and shall cause the complaint to be investigated. The results of said investigation shall be presented to the Village Board within thirty (30) days and the matter may be decided by the Village Board or upon motion of the Board it may be referred to the... County Board of Ethics, which in such case shall be deemed the Board of Ethics for the Village.

Because this complaint alleges that the Mayor violated the Village Code of Ethics, the Mayor recused herself from participating in the discussion, deliberation or determination of this matter.

By a resolution adopted on March 7, 2009, I was appointed by the Village Board of Trustees to serve as special counsel for the purpose of conducting and presenting the investigation contemplated by section 27.7 of the Village Code. The Board imposed no limits on the scope of my investigation, except that I agreed that my fees for professional services rendered in conducting the investigation and in preparing and presenting this report would not exceed \$7,500.00.

I was promptly provided with copies of all Village records that I deemed relevant to my investigation, and received the full cooperation of Village personnel including, most notably, the valuable assistance of the Village Clerk.

EVIDENCE CONSIDERED

In conducting this investigation, I reviewed the following documents and records obtained from the Village Clerk, provided by the Complainant and the Mayor, or available on the internet:

1. Ethics complaint of Mr. RR, dated February 24, 2009.

2. Letter of Mr. RR in further support of ethics complaint, dated March 12, 2009.
3. Letter of Mr. RR to the editor of the M Press, "Ethics and Honesty Missing in PM", dated February 20, 2009.
4. Letter of Hon. BD, Mayor of the Village of PM, in response to ethics complaint, dated March 11, 2009.
5. Record of Campaign Contributions for the year 2008, Friends of BD, filed with the New York State Board of Elections and posted on the Board's web site.
6. Record of Campaign Contributions for the year 2008, Friends of CJ, filed with the New York State Board of Elections and posted on the Board's web site.
7. Letter of TK, Esq., partner in the firm of FF, P.C., proposing professional services as Village Attorney, dated April 13, 2007, accepted by Hon. BD, Mayor of the Village of PM.
8. Minutes of meeting of the Board of Trustees, Village of PM, dated April 17, 2007, authorizing the appointment of the firm of FF, P.C. as Village Attorney, and appointing SK, Esq., as Village Prosecutor.
9. Biography of TK, Esq., partner in the firm of FF, P.C.
10. Letter of TK, Esq., to the editor of the M Press, "A Disturbing Trend", dated April 2, 2004.
11. LIA Foundation, roster of Board of Trustees, copyright 2005 - 2009.
12. Minutes of meeting of the Board of Trustees, Village of PM, dated July 17, 2007, authorizing the Mayor to execute a certain lease agreement with MA Realty for the rental of office space.

13. Agreement of Lease, dated August 27, 2007, between MA Realty as Owner, and Village of PM, as Tenant.
14. Docket information maintained by the Office of Court Administration in the matter of The Incorporated Village of PM, Plaintiff, against JI, Defendant.
15. So-Ordered Stipulation of Settlement, dated July 7, 2008, in the matter of The Incorporated Village of PM, Plaintiff, against JI, Defendant.
16. Minutes of meeting of Board of Trustees, Village of PM, dated July 15, 2008, memorializing terms of settlement in the matter of The Incorporated Village of PM, Plaintiff, against JI, Defendant.
17. Village web site announcement of settlement in the matter of The Incorporated Village of PM, Plaintiff, against JI, Defendant.
18. Minutes of meeting of Board of Trustees, Village of PM, dated April 15, 2008, re-appointing FF, P.C., as Village Attorney and SK, Esq., as Village Prosecutor.
19. Minutes of meeting of Board of Trustees, Village of PM, dated September 16, 2008, authorizing the Village to join the PW Office of Emergency Management at an annual cost of \$1,000.00.
20. Inter-Municipal Agreement for Emergency Management among the Incorporated Village of SP, Incorporated Village of BE, Incorporated Village of M, Incorporated Village of PWN, Incorporated Village of PH, Incorporated Village of PM, and Town of NH, dated September and October 2008.
21. Minutes of meeting of Board of Trustees, Village of PM, dated October 22, 2008, appointing Mayor D as Village representative to the PW Office of Emergency

Management, and Trustee D as first alternate representative to the PW Office of Emergency Management.

22. Article published by the M Press, online edition, February 13, 2009, "...Villages and Towns Discuss Emergency Plans – Members Include PH and PM".

The foregoing documents and records are compiled in an appendix to this report filed in the office of the Village Clerk.

In addition to reviewing the foregoing documents and records, I listened to an audio recording of the meeting of the Board of Trustees held on April 17, 2007, at which the firm of FF, P.C., was appointed as Village Attorney, and SK, Esq., was appointed as Village Prosecutor.

In conducting this investigation, I interviewed the following individuals:

1. Complainant, Mr. RR.
2. Hon. BD, Mayor of the Village of PM.
3. Hon. MC, Deputy Mayor of the Village of PM.
4. Hon. SM, Trustee of the Village of PM.
5. Former Village Trustee JA.
6. Former Village Trustee JK.
7. Hon. JP, Clerk of the Village of PM.
8. TK, Esq.
9. Mrs. EK.
10. SK, Esq.
11. TMH, Esq.
12. TPH, Esq.
13. MS, Esq.

14. Hon. PF, Commission of the PW Office of Emergency Management.

CONTROLLING AUTHORITY

New York General Municipal Law Article 18 (Conflicts of Interest of Municipal Officers and Employees) § 801 (Conflicts of interest prohibited) provides, in pertinent part, that:

Except as provided in section eight hundred two of this chapter, (1) no municipal officer or employee shall have an interest in any contract with the municipality of which he is an officer or employee, when such officer or employee, individually or as a member of a board, has the power or duty to (a) negotiate, prepare, authorize or approve the contract or authorize or approve payment thereunder, (b) audit bills or claims under the contract, or (c) appoint an officer or employee who has any of the powers or duties set forth above....

New York General Municipal Article 18 (Conflicts of Interest of Municipal Officers and Employees) § 800 (Definitions) provides, in pertinent part, that:

When used in this article and unless otherwise expressly stated or unless the context otherwise requires:

3. "Interest" means a direct or indirect pecuniary or material benefit accruing to a municipal officer or employee as the result of a contract with the municipality which such officer or employee serves. For purposes of this article a municipal officer or employee shall be deemed to have an interest in the contract of (a) his spouse, minor children and dependents, except a contract of employment with the municipality which such officer or employee serves, (b) a firm, partnership or association of which such officer or employee is a member or employee, (c) a corporation of which such officer or employee is an officer, director or employee and (d) a corporation any stock of which is owned or controlled directly or indirectly by such officer or employee.

New York General Municipal Law Article 18 (Conflicts of Interest of Municipal Officers and Employees) § 803 (Disclosure of interest) provides, in pertinent part, that:

Any municipal officer or employee who has, will have, or later acquires and interest in...any actual or proposed contract, purchase agreement, lease agreement or other agreement, including oral agreements, with the municipality of which he or she is an officer or employee, shall publicly disclose the nature and extent of

such interest in writing to his or her immediate supervisor and to the governing body thereof as soon as he or she has knowledge of such actual or prospective interest. Such written disclosure shall be made a part of and set forth in the official record of the proceeding of such body.

New York General Municipal Law Article 18 (Conflicts of Interest of Municipal Officers and Employees) §805-a (Certain action prohibited) provides, in pertinent part, that:

1. No municipal officer or employee shall:
 - a. directly or indirectly, solicit any gift, or accept or receive any gift having a value of seventy-five dollars or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part...

Chapter 27 (Ethics, Code of) of the Village Code, section 27.2 (Definitions) provides, in pertinent part, that:

As used in...[the Code of Ethics], the following...[term] shall have the...[meaning] indicated:

INTEREST – a pecuniary or material benefit accruing to a municipal officer or employee, unless the context otherwise requires.

Chapter 27 (Ethics, Code of) of the Village Code, section 27.3 (Standards of conduct) provides, in pertinent part, that:

Every officer or employee of the Incorporated Village of PM shall be subject to and abide by the following standards of conduct:

- A. Gifts. He shall not, directly or indirectly, solicit any gift or accept or receive any gift, regardless of value whether in the form of money, services, loan, travel, entertainment, hospitality or any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him or could reasonably be expected to influence him in the performance of his official duties or was intended as a reward for any official action on his part. [Note: this is the same prohibition on the receipt of gifts as set forth in New York General Municipal Law §805-a, except without the \$75.00 threshold.]...

E. Disclosure of interest in legislation. To the extent that he knows thereof, a member of the Village Board and any officer or employee of the Incorporated Village of PM, whether paid or unpaid, who participates in the discussion or gives official opinion to the Village Board on any legislation before the Village Board, shall publicly disclose on the official record, the nature and extent of any direct or indirect financial or private interest he has in such legislation.

FINDINGS OF FACT

Based on the documents and records that I reviewed and the interviews that I conducted, I made the following findings of fact:

1. Mayor D was an unsuccessful candidate in the November 2008 election for member of the New York State Senate for the applicable Senate District.
2. “Friends of BD” was the duly constituted campaign committee for Mayor D’s State Senate campaign.
3. Senator CJ was the successful candidate in the November 2008 election for member of the New York State Senate for the applicable Senate District.
4. “Friends of CJ” was the duly constituted campaign committee for Senator J’s State Senate campaign.
5. The November 2008 campaign for member of the New York State Senate for the applicable Senate District was a high profile race with control of the State Senate potentially dependant on its result; it attracted significant media attention and extensive fund raising efforts were made by the respective campaigns and by the major political parties.

APPOINTMENT OF FF

6. On April 17, 2007, the Board of Trustees appointed the firm of FF as Village Attorney.
7. In proposing the appointment of FF as Village Attorney, Mayor D informed the Board, among other things, that she had interviewed the attorney who would serve as the Village's principal contact at the firm, RS; that Ms. S was well recommended by other villages with which she had worked, including the Village of PH; that the firm offered extensive municipal and litigation services; and that the firm's hourly rate would be comparable to the rate charged by the predecessor village attorney.
8. The resolution appointing FF as Village Attorney passed by a vote of three to two, with Mayor D, Deputy Mayor C, and Trustee M in favor, and then Trustees A and K opposed.
9. At all relevant times, TK was a partner in the firm of FF (at no time was Mr. K the firm's "CEO" or managing partner the complainant alleges).
10. Mayor D served with Mr. K on the M School Board for six years, and also served with Mr. K on the Board of Trustees of the LIA Foundation.
11. At all relevant times, Mr. K and his wife, EK, were social friends of Mayor D's.
12. Mayor D did not disclose on the public record of the April 17, 2007 meeting of the Board of Trustees that she had a social relationship with Mr. K; and then Trustees A, K and M were unaware of the social relationship.
13. Due to litigation costs incurred in a lawsuit originally filed by the Village in June 2006, and settled before trial in July 2008, professional fees paid to the firm of FF have significantly exceeded the professional fees paid to prior counsel.

14. On April 15, 2008, the Board of Trustees approved the re-appointment of FF as Village Attorney by a vote of four to one, with Mayor D, Deputy Mayor C, and Trustees D and T in favor, and Trustee M opposed.
15. Mrs. K actively supported Mayor D's State Senate campaign and, on September 16, 2008, made a campaign contribution of \$2,500.00 to Friends of BD.
16. Mrs. K's contribution was made from her own funds, and paid from an account that she maintains in her individual name.
17. Mrs. K's contribution to Mayor D's Senate campaign was made on her own initiative, without a solicitation from the candidate or the campaign committee.
18. On October 6, 2008, Mr. K made a campaign contribution of \$125.00 to Friends of BD by purchasing a ticket to a widely attended fundraiser.
19. Mr. K's contribution was made in response to a mass mailing that he received from the campaign committee.

OFFICE LEASE

20. On July 17, 2007, the Board of Trustees authorized the execution of an Agreement of Lease with MA Realty, for the rental of office space located at 53 M Avenue, M, New York.
21. The lease was executed on August 27, 2007; it is for a term of ten years commencing September 1, 2007; and it provides, among other things that the Village may renew the lease for an additional term of five years, or may unilaterally cancel the lease at any time after the first year.
22. MA Realty is a New York limited liability company, having as its members TPH and TMH.

23. TPH attended college with Mayor D's husband, and has been a friend of Mayor D's for approximately twenty five years.
24. In proposing that the Board of Trustees authorize the execution of the Lease, Mayor D publicly disclosed that she had known the H Family for 25 years.
25. On July 30, 2008, TPH made a campaign contribution of \$500.00 to Friends of BD.
26. TPH's contribution was made in response to a mass mailing that he received from the campaign committee.
27. On October 2, 2008, TMH made a campaign contribution of \$500.00 to Friends of BD.
28. TMH's contribution was made in response to a mass mailing that he received from the campaign committee, and in connection with a widely attended campaign fundraiser.

APPOINTMENT OF VILLAGE PROSECUTOR

29. On April 17, 2007, the Board of Trustees unanimously approved the appointment of the immediate past Village Attorney, SK, as Village Prosecutor.
30. On April 15, 2008, the Board of Trustees approved the re-appointment of SK as Village Prosecutor by a vote of four to one, with Mayor D, Deputy Mayor C, and Trustees D and T in favor, and Trustee M opposed.
31. SK is an active member of the County Republican Party and a member of its Executive Committee; he regarded the November 2008 election for member of the New York State Senate for the applicable Senate District as an important campaign.
32. On October 6, 2008, the firm of H&K made a campaign contribution of \$125.00 to Friends of BD by purchasing a ticket to a widely attended fundraiser.
33. The contribution by H&K was made in response to a mass mailing received from the campaign committee.

SETTLEMENT OF VILLAGE LITIGATION

34. From June 2006 through July 2008, the Village was plaintiff in a lawsuit pending in State Supreme Court seeking, among other things, an order permanently enjoining defendant JI from violating the Village Code.
35. In the litigation, Mr. I was represented by the firm of SW&B.
36. On June 22, 2008, the firm of SW&B made a campaign contribution of \$750.00 to Friends of CJ.
37. On July 7, 2008, the Village entered into a So Ordered Stipulation of Settlement resolving the litigation and providing, among other things, that the Village would be paid the sum of \$115,000.00 in addition to the payment of attorneys fees previously awarded to the Village, that certain code violations would be remedied, and that certain claims against the Village would be withdrawn.
38. On July 27, 2008, the firm of SW&B made a second campaign contribution of \$750.00 to Friends of CJ.
39. On September 10, 2008, MS, a member of the firm of SW&B, made a campaign contribution of \$500.00 to Friends of BD.
40. Mr. S is a former member of the County Republican Committee; his contribution was made on his own initiative, without solicitation by Mayor D or the campaign committee.

INTER-MUNICIPAL EMERGENCY MANAGEMENT AGENCY

41. At all relevant times, PF was Commissioner of the PW Office of Emergency Management, an inter-municipal emergency preparedness agency serving the applicable area.

42. On July 25, 2008, Mr. F made a personal campaign contribution of \$1,000.00 to Friends of CJ.
43. On September 16, 2008, the Board of Trustees unanimously approved Village membership in the PW Office of Emergency Management, at an annual cost of \$1,000.00.
44. On September 18, 2008, Mr. F made a personal campaign contribution of \$300.00 to Friends of BD.
45. Mr. F's contribution was made on his own initiative, without solicitation by the Mayor or the campaign committee.
46. On October 22, 2008, the Board of Trustees approved the appointment of Mayor D as Village representative to the PW Office of Emergency Management by a vote of four to one, with Mayor D, Deputy Mayor C, and Trustees D and T in favor, and Trustee M opposed.
47. Neither Commissioner F nor Mayor D are compensated for their services as agency commissioner and Village representative, respectively.

CONCLUSIONS OF LAW

Article 18 of the New York General Municipal Law establishes standards of ethical conduct that are mandatory for officers and employees in every municipality within the State of New York, other than New York City. *See*, N.Y. Gen. Mun. Law §800(4).

In arriving at my conclusions of law, I employed a three step analysis to determine whether these facts presented a prohibited conflict of interest. I considered the following three questions:

(1) Did the Mayor's conduct violate N.Y. Gen. Mun. Law Article 18 (Conflicts of Interest of Municipal Officers and Employees)?

(2) Did the Mayor's conduct violate the Village Code of Ethics?

(3) Did the Mayor's conduct give rise to a prohibited appearance of impropriety under common law principles?

Appointment of FF as Village Attorney

N.Y. Gen. Mun. Law §801 prohibits municipal officers and employees from having certain interests in municipal contracts. The statute is violated if three elements are established: (1) the existence of a contract with the municipality; (2) a benefit accruing to an officer or employee of the municipality as a result of the contract; and (3) the power or duty of the officer or employee to negotiate, prepare, authorize or approve the contract, or payments under the contract, or appoint anyone to do these things. All three elements must be established for a violation to exist.

Here, the Village's agreement to retain FF as Village Attorney was a "contract" establishing the first element; and the Mayor's authority as a member of the Board of Trustees to negotiate and approve the contract and to review and approve bills that the firm may render for its services establishes the third element.

However, the first and third elements alone do not amount to a violation of the statute. Here, the second element is not established because the Mayor derived no "direct or indirect pecuniary or material benefit" from the firm's contract with the Village, and therefore had no "interest" in the contract as that term is defined by section 800 of the New York General Municipal Law.

The Mayor did not benefit directly or indirectly from the firm's contract with the Village. She has no ownership interest in the firm, and there is no evidence or reason to believe that the Mayor participates in any way in the revenue that the firm derives from its contract with the Village. The Mayor's social relationship with a partner in the firm did not give her a pecuniary interest in the firm's contract with the Village, nor confer upon her a direct or indirect material benefit arising from the contract. A social acquaintance is not among the persons or entities with whom a municipal officer or employee is deemed to share a common "interest" as the term is defined by New York General Municipal Law §800 (i.e. a spouse, minor child, or dependent; an outside employer; or a corporation of which such officer or employee is an stockholder, officer, director or employee).

For the same reasons, the Mayor did not have an interest in the Village's agreement to retain FF as Village Attorney that would have been subject, under New York General Municipal Law §803, to disclosure in the record of the public meeting at which FF was appointed as Village Attorney.

Similarly, the Village Code of Ethics defines an "interest" as "a material or pecuniary benefit accruing to a municipal officer or employee unless the context otherwise requires". The Village Code requires officers and employees who participate in the discussion of proposed legislation to publicly disclose on the public record any "direct or indirect financial or private interest" they may have in the proposed legislation.

Here again, the Mayor derived no direct or indirect pecuniary or material private benefit from the Board's action in approving the appointment of FF as Village Attorney and, therefore, the Mayor did not have a disclosable "interest in legislation" when the Board of Trustees approved the firm's appointment as Village Attorney.

By its very nature, village government contemplates home rule among neighbors, many of whom are likely to be socially acquainted with each other and with parties having business with the village. Neither the New York General Municipal Law nor the Village Code of Ethics define the term “interest” in sufficiently broad terms as to allow the interpretation that a Village official’s social relationship with a candidate for appointment to a Village office or position of employment amounts to a prohibited or disclosable interest in the matter on the part of the socially acquainted Village official.

Campaign Contributions to “Friends of BD”

Neither Article 18 of the NY General Municipal Law nor the PM Code of Ethics regulate the solicitation or receipt of campaign contributions by municipal officers or employees or the political parties for which they were candidates for public office, or require municipal officers or employees to recuse themselves in matters involving their campaign contributors. Article 14 of the NY Election Law, which regulates campaign contributions, also imposes no requirement that municipal officers or employees recuse themselves in matters involving contributors to their election campaigns or to the political parties for which they were candidates for public office.

The New York State Attorney General has opined that the subject of campaign contributions has been fully regulated by the New York Election Law and, therefore, a local municipal ethics code may not prohibit the award of municipal contracts to persons who have made political contributions to town officials or candidates for town office. 95 Op. NY Att’y Gen. 46 (1995).

NY Election Law §14-130 prohibits the personal use by candidates of funds contributed to their campaign committees. Furthermore, in DiLucia v. Mandelker, 110 A.D.2d 260 (1st Dep’t 1985); *aff’d*, 68 N.Y.2d 844 (1986), New York’s highest court held that political contributions

are not gifts subject to the prohibition in the New York City Charter against the receipt of gifts by City officials. Similarly, in Dunlop Dev. Corp. v. Spitzer, No. 102129/04 (N.Y. Co. Sup. Ct. Oct. 25, 2004), the New York State Supreme Court, New York County, ruled that campaign contributions are not gifts subject to the prohibition on the receipt of gifts by state officers and employees.

Thus, the analogous prohibitions on the receipt of gifts by Village officers and employees set forth in the New York General Municipal Law and the Village Code of Ethics are inapplicable to the contributions made to the Mayor's State Senate campaign committee.

Whether, under the applicable provisions of the United States and New York State Constitutions, the Village may amend its ethics code to require village officials to make a public disclosure on the record and recuse themselves in matters involving their campaign contributors is not a question presented for our consideration here. At present, there is no authority that would require an elected village official to publicly disclose or refrain from acting in ordinary matters involving contributors to his or her election campaign.

Ethics regulations are designed to promote high standards of official conduct and foster public confidence in government. An appearance of impropriety undermines public confidence. Therefore, courts have found that government officials have an implied duty to avoid conduct that violates the spirit and intent of ethics regulations, even where no specific statute is violated. *See, Zagoreos v. Conklin*, 109 A.D.2d 281 (1985); Tuxedo Conservation & Taxpayer Assoc. v. Town Bd. of Tuxedo, 69 A.D.2d 320 (2d Dept. 1979).

Discernable standards of conduct help dedicated municipal officers and employees to avoid unintended conflicts of interest and unwarranted suspicion. When a prohibited appearance of impropriety is found, the finding should have a rational basis that is clear and obvious. Such a

finding should be reserved for cases involving conduct that raises the specter of self-interest, or that is contrary to public policy. It should not be found in cases where the improper appearances are speculative or trivial. *See, Webster Assoc. v. Town of Webster*, 59 N.Y.2d 220 (1983); *Peterson v. Corbin*, 275 A.D.2d 35 (2d Dept. 2000).

It is self evident that local election campaigns are commonly financed by contributions from individuals who reside or do business within the village, or who have dealings with the village government. Here, for the reasons that follow, none of the campaign contributions at issue were made under circumstances that would justify the inference that the contributions were intended to influence the Mayor in the performance of her official duties, or to reward her for performing her duties; and, therefore, the contributions did not give rise to a prohibited appearance of impropriety.

Campaign Contributions by Mr. and Mrs. K

Lawyers practicing in the State of New York are required to adhere to standards of conduct that are incorporated in a code of professional responsibility.² The New York Code of Professional Responsibility (for Lawyers) includes “ethical considerations” that represent the objectives toward which every lawyer should strive, and which serve as a body of principles upon which a lawyer can rely for guidance. *See, New York Code of Professional Responsibility*, preamble.

Ethical Consideration 2-37 provides, in pertinent part, that:

Campaign contributions by lawyers to government officials or candidates for public office who are, or may be, in a position to influence the award of a legal engagement may threaten government integrity by subjecting the recipient to a conflict of interest. Correspondingly, when a lawyer makes a significant contribution to a public official or an election campaign for a candidate for public

² Effective April 1, 2009, the existing Disciplinary Rules will be replaced by The Rules of Professional Conduct.

office and is later engaged by the official to perform legal services for the official's agency, it may appear that the official has been improperly influenced in selecting the lawyer, whether or not this is so. This appearance of influence reflects poorly on the integrity of the legal profession and government as a whole. For these reasons, ...the Code [of Professional Responsibility] prohibits a lawyer from making or soliciting a political contribution to any candidate for government office, government official, political campaign committee or political party, if a disinterested person would conclude that the contribution is being made or solicited for the purpose of obtaining or being considered eligible to obtain a government legal engagement. This would be true even in the absence of an understanding between the lawyer and any government official or candidate that special consideration will be given in return for the political contribution or solicitation.

Ethical Consideration 2-37 provides that:

In determining whether a disinterested person would conclude that a contribution to a candidate for government office, government official, political campaign committee or political party is or has been made for the purpose of obtaining or being considered eligible to obtain a government legal engagement, the factors to be considered include (a) whether legal work awarded to the contributor or solicitor, if any, was awarded pursuant to a process that was insulated from political influence, such as a "Request for Proposal" process, (b) the amount of the contribution or the contributions resulting from the solicitation, (c) whether the contributor or any law firm with which the lawyer is associated has sought or plans to seek government work from the official or candidate, (d) whether the contribution or solicitation was made because of an existing personal, family or non-client professional relationship with the government official or candidate, (e) whether prior to the contribution or solicitation in question, the contributor or solicitor had made comparable contributions or had engaged in comparable solicitations on behalf of government officials or candidates for public office for which the lawyer or any law firm with which the lawyer is associated did not perform or seek to perform legal work, (f) whether the contributor has made a contribution to the government official's or candidate's opponent(s) during the same campaign period and, if so, the amounts thereof and (g) whether the contributor is eligible to vote in the jurisdiction of the government official or candidate, and if not, whether other factors indicate that the contribution or solicitation was nonetheless made to further a genuinely held political, social or economic belief or interest rather than to obtain a legal engagement.

The standards enumerated in the Ethical Consideration 2-37 of the Code of Professional Responsibility (for Lawyers) compel the conclusion that Mr. K's contribution of \$125.00 to the Mayor's State Senate campaign on October 6, 2008 was not made to obtain a legal engagement

but, rather, was well within the generally accepted standards of proper professional and municipal conduct.

Most notably, the modest amount of the contribution itself eliminates any speculation that it was made to influence the Mayor in the discharge of her official duties, or was given as a *quid pro quo* for the appointment of FF as Village Attorney. The contribution was made 18 months after the firm's original appointment, and six months after its reappointment. Furthermore, it is clear that Mr. K's social relationship with Mayor D was a sufficient independent basis for the contribution.

Mrs. K is entitled to be judged as a distinct individual, with her own economic, political and social interests. Her personal contribution of \$2,500.00 to Mayor D's State Senate campaign on September 16, 2008 was motivated by her social relationship with the Mayor and by her genuine support for the Mayor's candidacy.

Campaign Contributions by TPH and TMH

On July 30, 2008, when TPH contributed \$500.00 to Mayor D's State Senate campaign, more than a year had already passed since his real estate firm had entered into a long term lease with the Village. The rights and obligations of his real estate firm as landlord, and the Village as tenant, could not have been affected by the contribution, nor do the circumstances justify any inference that the contribution was made to influence the Mayor in the conduct of her official duties, or to reward the Mayor for the performance of her duties. Rather, the circumstances amply demonstrate that the contribution was based on TPH's long standing social relationship with the Mayor and her husband.

So too, the contribution of \$500.00 made by TMH on October 2, 2008 in response to regular fundraising activities by the State Senate campaign suggests no basis for inferring any improper motive.

Campaign Contribution by H&K

As a Republican leader, SK regarded the November 2008 election for member of the New York State Senate for the applicable Senate District as an important contest. He had a genuine political interest in supporting the Mayor's campaign for State Senate. The modest amount of his \$125.00 campaign contribution itself eliminates any speculation that it was made to influence the Mayor in the discharge of her official duties, or was given as a *quid pro quo* for his appointment as Village Prosecutor. The circumstances under which the contribution was made, in response to regular fundraising activities by the State Senate campaign and in connection with a widely attended fundraiser, suggest no basis for inferring any improper motive.

Campaign Contribution by MS

The litigation in which MS represented a party adverse to the Village was settled two months before he made his \$500.00 contribution to the Mayor's State Senate Campaign on September 10, 2008. Moreover, Mr. S made two earlier contributions, each one of greater amount, to the campaign of Mayor D's electoral opponent.

Mr. S is a former member of the County Republican Committee. He made the contribution on his own initiative, without solicitation by Mayor D or the campaign committee. The amount, timing, and circumstances of the contribution suggest no basis for inferring any improper motive.

Contribution of PF

Contrary to the allegation made in the complaint, Commissioner F had not contributed to Mayor D's State Senate campaign prior to September 16, 2008, when the Board of Trustees approved Village membership in the inter-municipal emergency preparedness agency for which he serves.

Neither the Mayor nor Commissioner F receive any compensation for their services on behalf of the inter-municipal emergency preparedness agency.

Mr. F's contribution of \$300.00 to the Mayor's State Senate campaign on September 18, 2008 was made on his own initiative, without solicitation by the Mayor or the campaign committee. Previously, on July 25, 2008, Commissioner F contributed the much greater sum of \$1,000.00 to the State Senate campaign of Mayor D's electoral opponent. The amount, timing, and circumstances of Commissioner F's contribution to Mayor D's State Senate campaign suggest no basis for inferring any improper motive.

CONCLUSION

Based on the facts presented, the Mayor did not violate Chapter 27 (Ethics, Code of) of the Village Code, section 27.3 (Standards of conduct) subsection "A" (Gifts) when her campaign committee, Friends of BD, received campaign contributions from TK, a partner in the firm that serves as Village Attorney, and from his wife, EK; from TPH and TMH, members of a limited liability company that leases property to the Village; from H&K, a law firm whose member, SK, is employed as Village Prosecutor; from MS, an attorney that previously represented litigation adversaries of the Village; and from PF, commissioner of an inter-municipal emergency planning agency of which the Village is a dues paying member.

Based on the facts presented, the Mayor did not violate subsection “E” (Disclosure of interest in legislation) of Code of Ethics section 27.3 by the non-disclosure of her social relationship with Mr. K when the Board of Trustees appointed his firm as Village Attorney. Further, the Mayor did not fail to disclose that a commissioner of the inter-municipal emergency planning agency was a contributor to her campaign committee when the Board of Trustees approved Village membership in the agency

The foregoing constitutes the report of my investigation commissioned by the Board of Trustees of the Village of PM on March 7, 2009.

Dated: Roslyn, New York
March 16, 2009

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