

**Town of Brookhaven
Board of Ethics**

**OPINION 215
Thursday, February 23, 2012**

The Board of Ethics was asked to render an opinion as to whether a local bowling alley offering a free night of bowling to all Brookhaven Town Employees would constitute a conflict of interest. The Ethics Board has determined that this would not be a conflict under the Code of Ethics because it does not exceed the \$100 gift limitation, provided that the free night of bowling is offered no more than once per year.

Consistent with opinion #72, "the following Brookhaven Town employees and officers (the decision-makers) should decline the complimentary admission:

- Brookhaven Town Supervisor and management staff
- Town Council and their managerial staff
- Ethics Board members and staff
- Town Attorney and management staff."

OPINION 216

October 2011

The Ethics Board was asked if a Town of Brookhaven Department Head can participate in the auction to purchase vacant, surplus property that the Town intends to sell. In their deliberation, the Ethics Board referenced two sections of the Ethics Code which refer to the question asked. Ethics Code 28-1 Section B: *“The proper administration of the government of the Town of Brookhaven requires its officers and employees, whether elected or appointed, paid or unpaid, including members of any administrative boards, commissions or other agencies, **to be impartial and free from conflicts of interest, or even the appearance of conflicts,** and free from partisan political influences in fulfilling their public responsibilities. The purpose of this chapter is to establish standards of conduct and guidance to the officers, employees and appointees of the Town of Brookhaven.*

The Ethics Board also referenced Ethics Code 28-5 A (2): *General prohibition. A Town officer or employee shall not use his or her official position or office, or take or fail to take any action, in a manner which he or she knows or has reason to know may result in a personal benefit, financial or otherwise, for any of the following persons: (a) The Town officer or employee; (b) His or her outside employer or business; (c) A member of his or her household; (d) A customer or client (current or within the past five years); or (e) A family member.*

The Ethics Board has determined that this would be an apparent violation of the Code of Ethics.

Ethics Opinion #217

The Ethics Board was asked by the Town Attorney to render an opinion as to whether an Assistant Town Attorney can or should refer a town employee to a private attorney on a matter which relates to the issue for which the town employee consulted the attorney. The Town Attorney also inquired if the opinion of the Ethics Board would be different if the private attorney was a relative of the Assistant Town Attorney.

By way of example, the Town Attorney gave a scenario wherein an Assistant Town Attorney is assigned the task of being the person for employees to speak with regarding complaints of harassment, sexual harassment, or workplace violence. The Town Attorney states that in such a role, it would be proper for the Assistant Town Attorney to recommend that the employee consult with a private attorney.

The Town of Brookhaven's Code of Ethics and Disclosure is contained in Chapter 28 of the Town of Brookhaven Town Code. Section 28-5 (A)(2) of the Town of Brookhaven Town Code states:

A Town officer or employee shall not use his or her official position or office, or take or fail to take any action, in a manner which he or she knows or has a reason to know may result in a personal benefit, financial or otherwise, for any of the following persons:

- (a) The Town officer or employee
- (b) His or her outside employer or business
- (c) A member of his or her household
- (d) A customer or client (current or within the past five years)
- (e) A family member

Here, the Assistant Town Attorney referring the employee to a family member would clearly be in violation of the Code Ethics because in making the referral the Assistant Town Attorney had to know the referral may result in a financial benefit to a family member.

Making a referral to a private attorney that does not fall into one of the categories listed in Section 28-5 (A) (2) (a)-(e) would not in itself be a violation of the Town's Code of Ethics. However, the Ethics Board is aware that there is a custom among private attorneys to pay a "referral fee" to referring attorneys. If the Assistant Town Attorney were to accept any such "referral fee" that would also be a violation of Section 28-5.

Since the Ethics Board is made up of attorneys at this point, the Town Attorney also asked us to opine as to whether the actions described above violated the Attorney Code of Professional Conduct. DR5-101 states that:

A lawyer shall not accept or continue employment if the exercise of professional judgment on behalf of the client will be or reasonably may be affected by the lawyer's own financial, business, property, or personal interests, unless a disinterested lawyer would believe that the representation of the client will not be adversely affected thereby and the client consents to the representation after full disclosure of the implications of the lawyer's interest.

Therefore, it appears that it would also be a violation of the Code of Professional Conduct for an assistant town attorney to refer a matter to a family member or accept a referral fee wherein the Town could be a defendant.

In addition, as attorneys, the Ethics Board recommends that an Assistant Town Attorney as the contact person for harassment, sexual harassment, and/or workplace violence should make clear to an employee that contacts them with a complaint that they are only investigating the matter and that they cannot give the employee any legal advice as they are obligated to represent the interests of the Town; in order to avoid any conflict or the appearance of conflict in violation of section DR 5-105 regarding Conflicts of Interest and Simultaneous Representation. In further conference with the Town Attorney, it is the understanding of the Ethic Board that this is the practice already in place.

Ethics Opinion #217
May 2012

The Ethics Board was asked by the Town Attorney to render an opinion as to whether an Assistant Town Attorney can or should refer a town employee to a private attorney on a matter which relates to the issue for which the town employee consulted the attorney. The Town Attorney also inquired if the opinion of the Ethics Board would be different if the private attorney was a relative of the Assistant Town Attorney.

By way of example, the Town Attorney gave a scenario wherein an Assistant Town Attorney is assigned the task of being the person for employees to speak with regarding complaints of harassment, sexual harassment, or workplace violence. The Town Attorney states that in such a role, it would be proper for the Assistant Town Attorney to recommend that the employee consult with a private attorney.

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- (b) His or her outside employer or business
- (c) A member of his or her household
- (d) A customer or client (current or within the past five years)
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Here, the Assistant Town Attorney referring the employee to a family member would clearly be in violation of the Code Ethics because in making the referral the Assistant Town Attorney had to know the referral may result in a financial benefit to a family member.

Making a referral to a private attorney that does not fall into one of the categories listed in Section 28-5 (A) (2) (a)-(e) would not in itself be a violation of the Town's Code of Ethics. However, the Ethics Board is aware that there is a custom among private attorneys to pay a

“referral fee” to referring attorneys. If the Assistant Town Attorney were to accept any such “referral fee” that would also be a violation of Section 28-5.

Since the Ethics board is made up of attorneys at this point, the Town Attorney also asked us to opine as to whether the actions described above violated any of the Attorney Code of Professional Conduct. DR5-101 states that:

A lawyer shall not accept or continue employment if the exercise of professional judgment on behalf of the client will be or reasonably may be affected by the lawyer’s own financial, business, property, or personal interests, unless a disinterested lawyer would believe that the representation of the client will not be adversely affected thereby and the client consents to the representation after full disclosure of the implications of the lawyer’s interest.

Therefore, it appears that it would also be a violation of the Code of Professional Conduct for an Assistant Town Attorney to refer a matter to a family member or accept a referral fee wherein the Town could be a defendant.

In addition, as attorneys, the Ethics Board is of the opinion that an Assistant Town Attorney is put in an awkward position in being assigned as the contact person for harassment, sexual harassment, and/or workplace violence in that the attorney is obligated to represent the interest of the Town and also advise the employee who may have an action against the Town. The Ethics Board would respectfully refer the Town Attorney to section DR 5-105 regarding Conflicts of Interest and Simultaneous Representation and recommend the Town consider appointing non-lawyers as the contact person for those employees who may have an issue regarding harassment, sexual harassment and/or workplace violence.

ETHICS BOARD OPINION #218 – February 26, 2013

The Ethics Board has been requested to give an opinion as to whether a Town employee who is assigned as the Residential Rehabilitation Administrator in the Department of Housing and Human Services can/should obtain price quotes for personal construction at his home from a contractor who also performs construction services administered through the Town.

The requestor provided the Board with details of how the low income homeowners apply to a Town administered program and the process the contractors follow in order to bid on the work. Ultimately, Town officials review the bids award the contracts, etc. Zero-percent deferred loans are made available to the homeowners who are found eligible and such money is used to pay these contractors. The source of the funding are Federal Community Development Block Grants.

Chapter 28 of the Brookhaven Town Clerk provides the legislative guides the Ethics Board uses in issuing its opinions. Sections 28-1(b) and (c) speak generally about how “it is the intent of this chapter to prevent conflicts of interest or the appearance of conflicts of interest by requiring disclosure of those financial items which could reasonably be expected to lead to a conflict of interest or the appearance of a conflict of interest”.

Section 28-5 (1) further requires that Town employees treat all entities with which they have dealings “with equal consideration and without special advantage”. If the Town employee were to contract directly with an entity for personal work, despite all good intentions, it is Board’s opinion that this would create the appearance of a conflict of interest. Therefore, we believe that the Town employee should refrain from soliciting bids for his personal work from any entity that submits bids for Town administered jobs for which this employee has oversight.

Ethics Opinion #219 – October 2013

The Town of Brookhaven Board of Ethics has been asked if it is permissible for a member of the Town Board to sit in on an Executive Session regarding the settlement of a legal matter directly related to that Board member's actions. Furthermore the Board was asked if that Town Board member should recuse themselves from that portion of the work session as well as any vote and/or discussion on that matter at the Town Board meeting.

The Ethics Board has determined that this could potentially be a violation of the Code of Ethics and that the Town Board member should recuse himself/herself and not be present at that portion of the Executive Session dealing with this matter as well as recuse himself/herself during that portion of the Town Board meeting dealing with this specific matter.

Specifically sighting section 28-5, Section 4 (Recusal) of the Code of Ethics, [\(4\) Recusal](#).

[\(a\)](#) *A Town officer or employee shall promptly recuse himself or herself from acting on a matter before the Town when acting on the matter, or failing to act on the matter, may benefit any of the persons listed in Subsection [A\(2\)](#) of this section.*

[\(b\)](#) *Whenever a Town officer or employee is required to recuse himself or herself under this Code of Ethics, he or she:*

[\[1\]](#) *Shall promptly inform his or her superior, if any;*

[\[2\]](#) *Shall promptly file with the Town Clerk and Ethics Board a signed statement disclosing the nature and extent of the prohibited action or, if a member of a board, shall state that information upon the public record of the board; and*

[\[3\]](#) *Shall immediately refrain from participating further in the matter.*

[\(c\)](#) *Whenever a vote is required from which a Town officer or employee must recuse himself or herself, such recusal shall not be counted for the purpose of determining whether a majority or other ratio required by statute, local law, ordinance or resolution to pass a measure has been reached; provided, however, that no action may be taken by a body unless a majority of all of the members appointed or elected to such body, votes favorably. If a body is reduced below such majority by reason of a recusal required pursuant to this section, thereby causing an inability to act, the application shall be deemed denied.*

Ethics Opinion #220

January 2014

The Board of Ethics was asked to provide an opinion on whether or not it would be an ethical violation if a LIPA trustee served as a consultant for the Town of Brookhaven.

Determination:

The Board of Ethics has determined that a LIPA trustee serving as a consultant for the Town of Brookhaven would potentially be a violation of the Code of Ethics. In coming to this determination the Ethics Board pointed to the Code of Ethics, Section 28-5 (2) which reads:

On General Prohibition of Using the Office for Gain

Section 28-5 A. (2) states the following:

“General prohibition. A town officer or employee shall not use his or her official position or office to take or fail to take any action, in a manner which he or she knows or has reason to know may result in a personal benefit, financial or otherwise, for any of the following persons:

- a. the Town officer or employee;
 - b. his or her outside employer or business;
 - c. a member of his or her household;
 - d. a customer or client (current or within the past five years); or
 - e. a family member.



Town of Brookhaven Long Island

Edward P. Romaine, Supervisor

Ronald C. Manning, Chair

James E. McElhone, Esq.

Peter Legakis, Esq.

Robert Vecchio

Thomas P. Spier, Esq.

Kyle Markott, *Executive Director*

Ethics Opinion #221

The Board of Ethics was asked to provide an opinion regarding if it is permissible for an employee in the Law Department to remain in her position even though her family member is a Judge who handles and hears all Brookhaven Town ordinance issues.

Determination:

Based on the facts presented by the Law Department, including the fact that this employee does not get involved in or handle any matters involving Brookhaven Town ordinance issues, issues involving tickets, District Court proceedings, and any other Town matters being heard by named Judge, the Board of Ethics has determined that the employee can remain in her position.

January 27, 2016

Board of Ethics

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Ethics Board Opinion #222

June 5, 2019

Conclusion

Pursuant to Town Code § 28-5(B)(2), provisions of this Chapter shall not prohibit a ministerial act. Based upon the job description for Community Manager provided by ██████████, it is determined that most of the job responsibilities are ministerial, and in no way involve any matters involving the Town, or Town personnel.

Town Code § 28-5(A)(2)(b) states:

A. Code of Ethics for Town officers and employees.

(2) General prohibition. A Town officer or employee shall not use his or her official position or office, or take or fail to take any action, in a manner which he or she knows or has reason to know may result in a personal benefit, financial or otherwise, for any of the following persons:

(b) His or her outside employer or business

To avoid conflicts of interest, and also any perceived conflicts of interest, ██████████ shall comply with Town Code §28-5(A)(4) and recuse himself from acting on any matter regarding ██████████. ██████████ shall further comply with Town Code §§28-5(A)(5), (6) and (7), and shall designate ██████████ staff to handle all matters involving the Town. If these safeguards are in place, potential conflicts of interest can be avoided.

Therefore, ██████████ accepting the position of Community Manager with ██████████ is not incompatible with his position as an elected official of the Town Board.

In issuing this opinion, I have relied solely upon the facts and information presented. I have not undertaken an independent investigation, and therefore, this opinion is limited to the facts and information in the record. If material facts or information have not been disclosed or have been misinterpreted, this opinion is without force and effect.

Board Member Recusal Regarding Ethics Opinion #222

To the Committee-

I want to inform all of you that I will be recusing myself from discussion/deliberation on this matter.

It has been brought to my attention, that due to a very spirited and public difference of opinion that I had with **Mr. Foley** on a project in his district involving the company I am employed by, he has expressed a concern about me being objective in this matter.

Although his perception would be inaccurate, I will not bring any unnecessary attention or have this committee's work called into question for any reason as I respect the work that we all do and the input we all bring to the table.

I would request that the meeting minutes will clearly document my recusal in the matter and it's probably best that I do not attend that meeting if that is the only matter on the agenda.

If my attendance is required for other matters, I will attend to address those matters and leave when this item comes up for discussion/decision.

Thank you for your understanding in this matter.

Bob Vecchio