

COSTELLO

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October 12, 2022

Aaron O. Lavine, Esq.
City of Ithaca Attorney
Office of the City Attorney
108 East Green Street, 4th Floor
Ithaca, New York 14850

Re: Ethics Investigation (Complaint of Cynthia L Brock)

Dear Mr. Lavine:

This firm serves as counsel for the Tompkins County Ethics Advisory Board (“TCEAB”). We are in receipt of your letters dated August 17, August 31, and September 22, 2022, in which you assert questions concerning the authority and scope of TCEAB to investigate several matters raised in the above-referenced complaint. Please accept the following as our response on behalf of the TCEAB.

As you aptly noted, General Municipal Law § 808 governs Boards of Ethics established by the respective counties in New York. It provides, in pertinent part:

2. The board shall render advisory opinions to officers and employees of municipalities wholly or partly within the county with respect to this article and any code of ethics adopted pursuant hereto. Such advisory opinions shall be rendered pursuant to the written request of any such officer or employee under such rules and regulations as the board may prescribe. . . .

4. The county board of ethics shall not act with respect to the officers and employees of any municipality located within such county or agency thereof, where such municipality has established its own board of ethics, except that the local board may at its option refer matters to the county board.

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Pursuant to that statute, Tompkins County established the TCEAB. Under the Tompkins County Ethics Code, the TCEAB consists of five members appointed by the Tompkins County Legislature. The Tompkins County Ethics Code requires that one of the members of the TCEAB is a member of the County Legislature. However, none of the other four members may be an elected or appointed official of Tompkins County. These other four members of TCEAB serve as volunteers.

Since the City has not established its own board of ethics, TCEAB is required to act with respect to the officers and employees of the City because it is located within Tompkins County. Gen. Mun. Law § 800(4). Under New York law, TCEAB is further required to “receive, review and hear” all signed complaints alleging ethical violations and render advisory opinions. This necessarily involves a fact-finding and investigative process of the allegations and all related issues. TCEAB then determines if the complaint has merit and if there have been any violations of ethical standards and/or conflicts of interest.

Article 18 of the General Municipal Law generally prohibits conflicts of interests by municipal officials and employees. An interest is defined as “a direct or indirect pecuniary or material benefit accruing to a municipal officer or employee as a result of a contract with the municipality where such officer or employee serves.” Gen. Mun. Law § 800(4). Municipal officers and employees are defined as “an officer or employee of a municipality, whether paid or unpaid, including members of any administrative board, commission or other agency thereof.” Gen. Mun. Law § 800(5). Accordingly, the General Municipal Law prohibits municipal officers and employees from having a direct or indirect pecuniary or material benefit in any contract with the municipality. Similarly, municipal officers and employees may not:

- 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...thing or promise or in any other form, under the circumstances in which it could reasonably be inferred that the gift was intended to influence him or 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.
- c. receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relationship to any matter before any municipal agency of which he is an officer, member or employee, or of any municipal agency over which he has jurisdiction or to which he has the power to appoint any member, officer or employee; or
- d. receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any agency of his municipality, whereby his compensation is to be dependent or contingent upon any action by such agency with respect to such matter...

Gen. Mun. Law § 805-a (a),(c) and (d).

In addition, Section 808 which authorizes the establishment of a Board of Ethics established by the counties, also applies to the enforcement of “any code of ethics adopted pursuant hereto.” Section 806 of the General Municipal Law requires each city to “adopt a code of ethics setting forth for the guidance of its officers and employees of the standards of conduct reasonably expected of them.” Gen. Mun. Law § 806(1)(a).

The Code of Ethics for the City of Ithaca is contained within Chapter 55 of the City Code and was adopted in 1993. Section 1 sets forth the purpose of the Code:

A. The purpose of this chapter is to establish minimum standards of conduct to help ensure that the exercise of governmental responsibilities by City of Ithaca officials and employees is **free from improper influences that might cause those officials or employees to make, promote or hinder public decisions in order to advance their own private interests.** The standards and guidelines set forth in this chapter are intended to eliminate, to the greatest extent possible, the existence of conflicts of interest pertaining to city officials and city employees in the exercise of their official duties, to **minimize unwarranted suspicion** that such conflicts exist and to avoid potential conflicts of interest before the arise.

B. The rules of ethical conduct set forth in this chapter are intended to supplement those of §§ 800 through 813 of the General Municipal Law of the State of New York and any other applicable general or specific law relating to the ethical conduct and interest by municipal officials and employees.

Ithaca City Code § 55-1 (emphasis added). It appears the City Ethics Code incorporated Section 805-a (a) of the General Municipal Law and provides, in relevant part, that:

No city official or city employee shall, directly or indirectly, solicit, accept or receive any gift having a value of \$75 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 her or could reasonably be expected to influence him or her in the performance of his or her official duties or was intended as a reward for any official action on his or her part.

Ithaca City Code § 55-5. The Code also prohibits actual, potential or the appearance of conflicts of interest by requiring:

A. City officials and city employees must exercise their official duties solely in the public interest and must avoid actual conflicts of interest to the greatest extent possible.

B. City officials and city employees should avoid circumstances which compromise their ability to make impartial judgments solely in the public interest and should, to the greatest extent possible, avoid even the appearance of a conflict of interest. No city official or city employee shall knowingly take any action or incur any obligation of any nature which is in conflict with or might reasonably tend to conflict with the proper discharge of his or her duties on behalf of the City of Ithaca.

C. No city official or city employee shall receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any city agency of which he or she is an officer, member or employee or of any city agency over which he or she has jurisdiction or to which he or she has the power to appoint any member, officer or employee.

D. No city official or city employee shall receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relationship to any matter before any agency, where his or her compensation is to be dependent or contingent upon any action by such agency with respect to such matter...

E. Avoidance of conflicts.

(1) Each city official and city employee is responsible for exercising due diligence in attempting to avoid actual or potential conflicts of interest when voting or taking other discretionary action regarding all matters with which he or she deals on behalf of the city

(2) A city official or city employee shall exercise particularly careful diligence in avoiding any actual or potential conflict of interest when voting or taking other discretionary action on any matter brought before any element of the city government by an entity that employs said official or employee. In any such case, the involved city official or employee should attempt to avoid taking any action that could reasonably be interpreted as benefiting his or her career advancement, salary or standing within the entity that employs him or her.

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Ithaca City Code § 55-7(A)-(E). The Code further requires city officials and employees to recuse themselves from voting or taking any other discretionary act by providing:

Whenever a city official or city employee is called upon to vote on, advise on or otherwise take a discretionary action on a matter before the city, and either the performance or nonperformance of such action would provide a significant and special pecuniary or material benefit to him/herself or his/her family or otherwise create any potential conflict of interest, the officer or employee shall immediately declare the nature of the conflict of interest and shall refrain, where appropriate, from taking any action or inaction that would affect the outcome of the matter.

Ithaca City Code § 55-8.

Finally, in an apparent effort to avoid actual, potential or the appearance of conflicts of interest, the City has implemented a Gifting and Solicitation Policy, which provides in pertinent part:

Under New York State Law, the City of Ithaca is able to accept any type of donation/gift that it chooses to (i.e. art, equipment, professional services, funds, etc.). Gen. City. Law § 20(3). If goods, services, or funds are donated for a purpose that is limited to the purview of a single City department, then the donation may be accepted by the Mayor upon the advice of the City Attorney's Office. If the goods, services, or funds are donated for a purpose that would fall under the purview of multiple City departments, then the donation must be accepted through a resolution of Common Council that specifies how the donation will be allocated between departments. Acceptance by the Mayor or Common Council is not required when a private entity makes an unrestricted donation of funds to the City, a City department, or a City department's pre-existing program ("unrestricted funds").

When making a donation reasonably valued in excess of \$1,000, the donor should sign a simple statement prepared by the City Attorney's Office stating that they are irrevocable and unconditionally donating the goods, services or funds to the City of Ithaca.

Properly accepted donations of: funds (whether unrestricted or not) must be transmitted to the City Chamberlain or a department's Fiscal Manager and thereafter dispersed for expenditure only after the above-required acceptance by the Mayor or the Common Council has been completed, if required; goods should be delivered to the City department that will be using or storing the goods; services should be coordinated with the appropriate City department head(s) or their designee(s).

Again, since the City has not established its own board of ethics, the TCEAB is required to act with respect to the officers and employees of the City given it is located within Tompkins County. Gen. Mun. Law § 800(4). Accordingly, TCEAB is mandated to act with respect not only

to the questions specifically raised within the complaint of Council Person Cynthia L. Brock, but also other issues which refer, relate and/or involve the following matters:

- (a) if there were any actual, potential or appearance of conflicts of interests by City officers and employees, whether paid or unpaid, including members of any administrative board, commission, or other agency thereof; Gen. Mun. Law §§ 800(5), 805-a (a), (c) and (d); Ithaca City Code § 55-7(A)-(E).
- (b) whether there was proper avoidance of any actual, potential or appearance of conflicts of interest by City officers and employees; Ithaca City Code § 55-7(E).
- (c) if there were any actual, potential or appearance of conflicts of interest, did the officer or employee declare the nature of the conflict of interest and where appropriate refrain from taking any action or inaction that would affect the outcome of the matter; Ithaca City Code § 55-8.
- (d) whether any City official or employee was offered or accepted anything of value in excess of \$75.00 from which it could reasonably be inferred that the gift or promise was intended to influence him or her or could be reasonably expected to influence him or her in the performance of their official duties or intended as a reward for any official action on his or her part; Gen. Mun. Law § 805-a (a); Ithaca City Code § 55-7(B).
- (e) if any City official or employee received, or entered into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any city agency of which he or she is an officer, member or employee or of any city agency over which he or she has jurisdiction or to which he or she has the power to appoint any member, officer or employee; Gen. Mun. Law § 805-a (a)(c); Ithaca City Code § 55-7(C).
- (f) whether any City official or employee was influenced or rewarded for any official action or appointment; Gen. Mun. Law § 805-a (a)(c)(d); Ithaca City Code § 55-5.
- (g) if there were any actual, potential or appearance of conflicts of interests, did the City official or employee exercise due diligence in attempting to avoid the actual, potential or appearance of conflicts of interest when voting or taking other discretionary action regarding all matters with which he or she deals on behalf of the city; Ithaca City Code § 55-7(E)(1).
- (h) if there were any actual, potential or appearance of conflicts of interests, did the City official or employee attempt to avoid taking any action that could reasonably be interpreted as benefiting his or her career advancement, salary or standing within the entity that employs him or her; Ithaca City Code § 55-

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7(E)(2).

- (i) were there any violations of the City Gifting and Soliciting Policy which create any actual, potential, or perceived conflicts of interest.

It is important to note the above list of matters before TCEAB is not exhaustive and additional issues may arise during TCEAB's current investigation. However, as identified above, TCEAB will not provide any "opinions on non-ethics policy or political issues.". Instead, TCEAB's inquiries are limited to the issues and matters set forth above, which we believe are well within its authority and scope for investigation and issuance of an advisory opinion.

We trust this clarifies TCEAB's position concerning its authority and scope of its current investigation. TCEAB desires to promptly resolve these issues. It is important to emphasize that the investigation is ongoing and TCEAB has made no determinations as to the merits of Ms. Brock's complaint or the associated issues. TCEAB is committed to conducting a full, fair, and unbiased investigation.

Thank you for your attention to these matters and anticipated cooperation with the TCEAB investigation. Should you have any questions or wish to discuss any matter, please do not hesitate to contact me.

Very truly yours,

COSTELLO, COONEY & FEARON, PLLC



Paul G. Ferrara

PGF/cc