

**TOWN OF WEST SENECA
1250 Union Road
West Seneca, NY 14224**

**ETHICS BOARD
MEETING MINUTES
September 2, 2020**

Chairperson Carpenter called the meeting to order at 6:11 P.M.

ROLL CALL: Members Present – Amy Carpenter, Chairperson
Rodney Montgomery, Vice Chairperson
Jon Minear, Deputy Town Attorney
Michael Teager

Members Absent -- Tina Hawthorne, Town Attorney
Theresa Funk
Amy Kobler, Town Clerk
Lawrence Kavanaugh Jr.

APPROVAL OF MINUTES

Mr. Teager noted two spelling errors. Motion by Vice Chairperson Montgomery, seconded by Mr. Michael Teager, to approve the Ethics Board Meeting Minutes from August 5, 2020 with errors corrected.

Ayes: All

Noes: None

Motion Carried

COMMUNICATIONS

Appointment of Michael Teager

Chairperson Amy Carpenter welcomed newest Ethics Board Member, Mr. Michael Teager who gave a brief introduction of himself.

Michael Teager was appointed as a Member to the Ethics Board at a recent Town Board Meeting. He signed the Oath Book for a term ending in December 2021.

OPEN DISCUSSION

Annual Disclosure Statements

The Ethics Board will obtain the Annual Disclosure Forms submitted to Town Clerk Amy Kobler and will review them at the next meeting. Deputy Town Attorney Minear confirmed that these Annual Disclosure Statements can be obtained under the Freedom of Information Act.

Training Opportunities

Chairperson Carpenter has been searching for training opportunities for the Ethics Board. There are trainings offered by the state but they are focused more on fiscal responsibility. For that reason, Chairperson Carpenter decided to introduce a "Sample Ethics Complaint Case" for the Ethics Board to review later in the meeting.

Chairperson Carpenter explained that all complaint cases are confidential and take place during an Executive Session. A decision is voted on by the Ethics Board and Deputy Town Attorney Minear writes it up and then gives it to the Town Board for their review and action. The ethics complaint cases will be distributed on a colored piece of paper and are not to be sent over email. This is to maintain confidentiality.

Blank ethics complaint forms and documents are available on the Town of West Seneca website under the "Ethics Board" section for anyone to access.

SAMPLE ETHICS COMPLAINT CASE

Chairperson Carpenter read the sample complaint case from NYS:

"A village needs an environmental review for a park project. After competitive bidding, the contract was awarded to a firm whose primary stockholder (who owns 33% of the firm's stock) is one of the village trustees. The trustee did not participate in the village board's discussion and vote on the contract and will not perform any of the actual work under the contract.

Does the trustee have a prohibited interest in the contract? Why or why not? If the trustee does not have a prohibited interest, are there any other issues with which the village should be concerned?"

Chairperson Carpenter explained that the Ethics Board will usually discuss their thoughts and potential concerns. Deputy Town Attorney Minear stated that Board would need to evaluate if there was any violation of the Town of West Seneca Ethics Code.

Chairperson Carpenter made the following points for consideration:

- competitive bidding
- trustee did not participate in the discussion
- trustee will not be participating in any of the actual work
- trustee can benefit from the work as a 33% shareholder

Deputy Town Attorney Minear compared the case to President Donald Trump hosting an event at one of his banquet facilities, in which there was a competitive bidding process and his facility was selected. He added that this has happened in the past and that no charge was brought against him.

Michael Teager said, "It did not violate the letter of the law by it violated the spirit of the law." He mentioned that he would want to know more information about the various bids. However, because this is a situation takes place in a village, there will be some degree of cross-over. He thought it was suspicious but it most likely was technically not a violation.

After allowing the Ethics Board Members to give their thoughts on the sample ethics complaint case, Chairperson Carpenter read the guidelines provided by the state on the Ethics Complaint Case:

This is an example of prohibited interest in a contract.

1. According to the facts, there is a "contract" between the village and the engineering firm.
2. The village board member is deemed to have an "interest" in the contract because he is a stockholder in the engineering firm.
3. As a village trustee, he has Section 801 powers and duties in relation to the contract (e.g., the power to approve the contract and to audit claims under the contract).
4. No exceptions apply. This is not a pre-existing contract. The trustee owns one-third of the firm's stock – well above the 5% that would be considered a minimal holding. Because the trustee's interest arises from his status as a stockholder, the fact that he is not performing any of the actual work under the contract is irrelevant.

Therefore, in this instance, the trustee's interest in the contract is prohibited because he has Section 801 powers and duties and none of the statutory exceptions apply to the interest.

Other Issues to Consider:

Even if the trustee abstained from participating in the board's discussions or decisions on this contract, the trustee's interest in the contract would still be prohibited. It is the existence of Section 801 powers and duties, not whether they are exercised in a particular instance, that causes an interest in a contract to be prohibited. Moreover, there is no statutory exception for recusal and abstention.

Deputy Town Attorney Minear commented that it would be important to compare this to the Town of West Seneca's Ethics Code first, see how applicable it is to this scenario and apply the exceptions.

Chairperson Carpenter asked Deputy Town Attorney Minear what he would think of the situation if it took place in small town and if it was the only company within miles that could do the job. Deputy Town Attorney Minear replied that the individual would have to abstain or recuse himself. He cannot vote to make any amendments to the contract or vote to have any say regarding this contract or execution because it would appear that there was an issue. He continued to mention that as long as the information was disclosed and everyone was aware of it, then there might not be an issue.

GENERAL PUBLIC COMMENTS

None.

ADJOURNMENT

Chairperson Carpenter notified everyone that the Tech Provider for the Town Email Account has changed from IEvolve to AIS.

Motion by Vice Chairperson Montgomery seconded by Mr. Teager to adjourn the meeting at 6:47 p.m.

Ayes: All

Noes: None

Motion Carried



Amelia S. Greenan
Secretary to the Ethics Board