July 14, 2016

Board of Ethics Inquiry Findings #6-2016

Joanne D. Yepsen, Mayor
474 Broadway, City Hall
Saratoga Springs, NY 12866

Dear Mayor Yepsen:

On June 20, 2016, the Saratoga Springs Board of Ethics conducted a hearing at your attorney’s request, pursuant to section 7.7, following the Board’s written opinion of March 24, 2016. As per your attorney’s request, the hearing was conducted on your written submittal. No personal appearances were made.

The Board reviewed your attorney’s memorandum dated June 10, 2016, as well as other documents previously reviewed. Those documents included, but were not limited to, emails dated from October 6, 2015 through January 15, 2016, the letter of inquiry dated February 1, 2016, and the Board’s previous opinions dated January 19, 2016 and March 24, 2016.

The Board has considered all of the arguments presented, including points related to New York’s General Municipal Law, and does not find them so persuasive as to require a reversal or modification of its March 24, 2016 opinion. The jurisdiction of this Board is specifically relative to the City’s own Code of Ethics. A municipality may include any provision in its own Code of Ethics that the governing body deems appropriate, so long as they are not inconsistent with Article 18 of New York’s General Municipal Law.

In January, you submitted a request to this Board for an advisory opinion. Your submittal discussed a possible future contract to provide private professional services to a foundation. Some specifics of the work to be done were discussed, as well as the amount of compensation, but no final contract was signed and no work was ever contracted. The foundation was a part of Saratoga Hospital, an entity that proposed a zoning amendment before the City Council. While the foundation maintains their own board of trustees, the foundation secures, manages and distributes gifts to support the mission of the institution. As the philanthropic arm of the institution the foundation’s priorities are determined in collaboration with the institutions management and board of trustees.

The Board’s opinion to you stated that the foundation was an inseparable part of the institution, and the institution, by applying for the zoning amendment, was “doing business” with the City within the meaning of Section 13-3 (I) of the Code of Ethics. The Board’s opinion indicated that your voting on the amendment
would therefore be contrary to that section. Following the initial discussion and review by the Board, you provided additional information that the contract discussions would not result in any contract. The Board found that this additional information did not alter its conclusions, and so stated in the minutes of its next meeting.

Commissioner Madigan’s letter of inquiry requested an opinion as to whether your discussions with the hospital foundation, in and of themselves, constitute a violation of the Code.

The Board finds that section 13-3 (I) of the Code reads:

“1. Outside Employer or Business. Officers and employees shall not engage in, solicit, negotiate for or promise to accept work for an outside employer or business who does business with the city which creates an implied conflict with or impairs the proper discharge of his official duties or results in personal gain.”

This section, unlike several other sections of the Code, does not allow either for the consideration of intent or for any quantitative analysis. Unlike the general prohibition in section 13-3 (A), there can be no consideration of whether the officer or employee knew or had reason to know of the prohibited result. Neither is there a threshold, as in the definition of “customer or client” for the amount of the contract or the extent to which the negotiations have progressed. The section becomes relevant even upon minimal efforts to solicit or negotiate for work under the stated circumstances. The documents submitted to the Board for consideration establish, at a minimum, that the hospital filed its application for the zoning change on August 20, 2015, and that your discussions with members of the hospital foundation were still ongoing through emails dated October 6, 2015, and January 15, 2016. The Board takes notice of your full compliance with the advice given in its previous opinion regarding your vote on the proposed zoning amendment.

Therefore since the Board, in section 13-3(I), has no statutory authority to consider any of several mitigating factors that might be present in this situation, it must find, as a matter of law, that any efforts to solicit or negotiate for outside employment with one who does business with the city, within the meaning of that section, including your described efforts with the hospital foundation, constitute a violation of section 13-3 (I) of the Code of Ethics.

This concludes the Board’s findings in this matter. Pursuant to section 8.5 of the Board of Ethics Procedures the Board shall provide copies of its decision to the respondent’s appointing authority, or in the case of elected officers, to the City Council for appropriate action as authorized by law.

Sincerely,

[Signature]

Justin Hogan
Chair

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