

Village of



Mamaroneck

ETHICS BOARD

*Village Hall At The Regatta
P.O. Box 369
123 Mamaroneck Avenue
Mamaroneck, N.Y. 10543*

TELEPHONE
(914) 777-7723
FAX NUMBER
(914) 777-7787

VILLAGE OF MAMARONECK BOARD OF ETHICS

PRIVILEGED AND CONFIDENTIAL

July 15, 2010

TO: The Mayor and the Board of Trustees

FROM: The Board of Ethics

On June 7, 2010, Christie McEvoy-Derrico, Esq., the Village Attorney, transmitted an e-mail to the Board of Ethics ("BOE") which requested that the BOE investigate whether or not the recent hiring by the Department of Public Works ("DPW") of Nick Santoro, the son of Deputy Mayor and Trustee Louis Santoro ("Trustee Santoro"), as a seasonal employee violated Section 21-4 of the Village of Mamaroneck Ethics Code (the "Ethics Code"). On June 8, 2010, the Journal News Blog <http://soundshore.lohudblogs.com/2010/06/08/mamaroneck-trustee-responds-to-criticism-of-son-getting-village-job/?GID=mUuFTbyHGc4MB90RvIbWT8pQQVqXgNCbwF3G2uQPboY%3D> reported that Trustee Santoro "did not notify the Ethics Board prior to his son getting hired because he didn't think it was an issue considering his son has gotten seasonal jobs before. But he did bring it to the Ethics Board once concerns were raised." Based upon the request of the Village Attorney and the published report, the BOE commenced its investigation into the hiring of Nick Santoro by DPW pursuant to Section 21-13 of the Ethics Code.

It is the opinion of the BOE that based upon the facts ascertained by the BOE, the hiring by the DPW of Nick Santoro does not constitute a violation of the Ethics Code or of the New York General Municipal Law.

No evidence was presented to the BOE which demonstrated that Trustee Santoro or anyone acting on his behalf sought to influence the hiring of Nick Santoro by the DPW. Rather, the appointment of seasonal workers is made by the Village Manager and not the Board of Trustees. At the time of his appointment, Nick Santoro was over 18 years old, and hence not a minor for the purpose of attributing to his father an interest in a contract otherwise requiring disclosure to, and ratification by, the Board of Trustees under Section 21-4(M) of the Ethics Code.

We also note that no evidence was presented to the BOE that indicated that Trustee Santoro had voted for a line item in the Village Budget dedicated to the job position for which Nick Santoro was hired. Rather, the Village Budget contained a lump sum line item to be used for multiple seasonal positions. The evidence presented to the BOE by Trustee Santoro, the Village Manager Richard Slingerland and Anthony Iaccovelli, the head of the DPW, indicated that Nick Santoro had been hired by the Village in previous summers as a seasonal employee, that this summer other individuals had also been hired as seasonal employees, and that no prospective qualified employees or current employees had been denied employment or removed to facilitate the hiring of Nick Santoro. Trustee Santoro has filed an amended disclosure form reflecting Nick Santoro's employment.

Accordingly, it appears that the prohibitions and strictures contained in Sections 21-4(A), (C), (G), (N) and (O) and 21-5(B) and (C) of the Ethics Code regarding the use of office for personal benefit or recusal, and disclosure, respectively, have not been violated by Trustee Santoro.

However, the BOE has determined that Nick Santoro was working approximately 40 hours per week as a seasonal employee, as opposed to clearly being a part time seasonal employee. This last fact warrants further discussion. Section 21-4 of the Ethics Code provides in pertinent part:

E. Nepotism.

(1) Policy. Employees' relatives will not be employed by the Village on a full-time basis under any of the following circumstances:

(a) Where one of the parties would have authority (or practical power) to supervise, appoint, remove or discipline the other;

(b) Where one party would be responsible for auditing the work of the other;

...

(e) Where one of the parties is an elected official, except when the family member is currently employed by the Village prior to the elected official obtaining office or if the family member is currently employed by the Village becomes a family member of an official.

(2) Any employee currently employed prior to the adoption of this Chapter shall be exempt.

At the outset, it is the view of the BOE that the "grandfather" clauses contained in Section 21-4(E) are inapplicable. Nick Santoro was not an employee of the Village at the time Trustee Santoro was elected. Rather, Nick Santoro was a full time student. The fact

that he had worked for the Village in prior summers does not trigger the exemptions contained in Section 21-4(E). However, that does not end the inquiry of the BOE.

First, there is question as to whether Trustee Santoro is an “employee” for purposes of this Section. Throughout the Code of Ethics, references are made to “officer, Board member or employee.” Here, the language used in the statement of policy is limited to “employees.” However, Subsection 21-4(E)(1)(e) addresses the situation where one of the parties is an elected official. This suggests that the nepotism policy was intended to cover elected officers as well as employees. Yet, the final phrase of subsection 21-4(E)(1)(e) introduces some ambiguity regarding this conclusion. The BOE recommends that the Board of Trustees amend the Ethics Code to expressly clarify that the policy enunciated in Subsection (E)(1) applies to elected officials.

Second, the term “full-time basis” is not further defined in the Code of Ethics as to whether the term encompasses full-time seasonal employees. Seasonal, part-time and full-time are treated as separate categories of employment under the New York State Civil Service Rules. By contrast, the Westchester County Civil Service Rules contain no separate definition of full-time or seasonal employment. However, the Westchester County Civil Service Rules define “part-time employment” as “less than fifty percent of the time prescribed as a normal work week by the appropriate governing body or other appropriate authority of the civil division or wherein the employee earns not more than Three Thousand (\$3,000.00) Dollars annually.” Further, Section 207-b of the New York State Finance Law recognizes the category of full-time annual salaried employees and full-time seasonal employees. These distinctions are not drawn by the Code of Ethics. Given the lack of clear delineation within the Ethics Code, the BOE declines to find that a violation of Section 21-4(E) has occurred.

It is also the view of the BOE that the Code of Ethics should be clarified as to whether or not seasonal employees should be covered by the anti-nepotism policy contained in Section 21-4(E)(1). Further, it is the view of the BOE that, regardless, the children and family members of the Village’s elected officials should not be hired by the Village and that the Ethics Code be so amended to reflect this recommendation.

Finally, in addition to the aforementioned provisions of the Code of Ethics, Article 18 of the General Municipal Law, entitled “Conflicts of Interest of Municipal Officers and Employees” proscribes various interests of municipal officers and employees in contracts with the municipality in which they serve. Under Section 800(3) of that Article, a municipal officer or employee is deemed to have an interest in the contract of his minor children or dependents, except a contract of employment with the municipality which such officer or employee serves. With this exception, no other provision of General Municipal Law Article 18 would appear to be relevant to this matter.

BOE Members Castellani, Green, Tammearu and Terrone concur in this decision. BOE Chair Mitchell took no part in this matter.