

July 20, 2023

By Email

Karl J. Sleight, Esq.
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Re: *Josh Cohn, Individually and as the Mayor and Member of the City Council of the City of Rye, Carolina Johnson, Julie Souza and Benjamin Stacks, Individually and as Members of the City Council of the City of Rye vs. City of Rye Board of Ethics*
Index No. 62424/2023 (Westchester County Supreme Court)

Dear Mr. Sleight:

We are litigation counsel to the City of Rye Board of Ethics (“Board of Ethics”) in the above-referenced matter (the “Petition”). We write in response to your letter of July 13, 2023 (the “Letter”). As we explained to you during our phone call on July 12, we are open to discussing efficient resolution of the case, whether by mediation or otherwise, in order that the Board of Ethics and residents of Rye are spared needless legal expenses and other burdens of litigation. As we further explained, any proposed resolution of the case must include immediate dismissal of the Petition, which is baseless. Accordingly, to the extent that you propose to maintain the baseless Petition as part of your proposed “solution” in this case, such proposal is unacceptable, and we reject it.

As you are aware, this case began with Petitioner Josh Cohn being aggrieved to learn that his neighbor had an imminent plan to clear cut the trees on the neighbor’s lot. Thereafter, he and others sought to and did pull levers of power available to them as officials in the City of Rye, in order that extraordinary measures be taken to bring up legislation comprising a tree-cutting moratorium, without regular deliberation and process. Three members of the Rye City Council, none of whom are Petitioners in this case, then requested an advisory opinion from the Board of Ethics on the question “[w]hether it is appropriate for a councilmember to attend and vote on actions pertaining to the proposed tree moratorium at the upcoming [special] council meeting?”

The Board of Ethics, in receipt of these requests for an advisory opinion, promptly did its job, and did it well. The Board of Ethics Chairperson and two of its members – each of whom volunteers as a public service for the City of Rye – issued the Board of Ethics’ Confidential Advisory Opinion. The Board of Ethics addressed the Confidential Advisory Opinion to those Councilmembers who requested it, and provided it only to them. The Board of Ethics concluded: “It is our conclusion that any action taken by any of the Councilmembers in furtherance of the tree moratorium at the [special] meeting would be cloaked with an appearance of a conflict or an impression of impropriety that would violate Section 15-10(B) of the City’s Code of Ethics. . . .” The Board of Ethics’ conclusion was plainly reasonable and entirely within



its responsibilities. *See* Rye Code of Ethics § 15-13(B) (“The Board shall render advisory opinions on specific situations to officers . . . of the City with respect to . . . any Code of Ethics . . .”).


The Petition fails to acknowledge the foregoing, and instead gets the law and the facts completely backwards, presumably because it was brought upon a cynical calculation that the best defense is a good offense. The Petition is a complete waste of time and resources. As you are surely aware, among the Petition’s myriad failings is that it is barred by binding precedent holding that an advisory opinion of a board of ethics cannot form the basis of an Article 78 petition. *See Scarpati-Reilly v. Town of Huntington Board of Ethics, et al.* 751 N.Y.S.2d 753, 754 (App. Div., 2d Dep’t 2002) (“The Supreme Court properly determined that the advisory opinion of the Town of Huntington Board of Ethics . . . was nonfinal and not subject to review in a proceeding pursuant to CPLR article 78.”).

In your Letter, you propose as a “solution,” the creation of a committee to, among other things, review the current ethics code. Under your proposal, the Petition would remain pending on the Court’s docket, but the Board of Ethics agrees not to defend itself. This is neither an acceptable solution nor any “solution” to the problem at hand, which is that Petitioners have initiated a baseless Petition against the Board of Ethics. The solution to that problem is the prompt dismissal of the Petition. To the extent that Petitioners are concerned about “ending fees and costs to the City taxpayers,” to which you refer in your Letter, Petitioners’ dismissal of their baseless suit is the swiftest means of addressing such concern. Moreover, to the extent that the creation of a committee solves some other purported problem within the City of Rye regarding its Code of Ethics, that is the prerogative of the City Council, not the Board of Ethics. Indeed, in this case the Board of Ethics functioned well within the existing Code of Ethics.

Accordingly, while we applaud any efforts that could reasonably yield prompt resolution of this case, the proposal set forth in your Letter, which does not include immediate dismissal of the Petition, is not such an effort, and we reject it.

We remain available to discuss meaningful solutions to this matter further at your convenience.

Very truly yours,
YANKWITT LLP

By: 

Russell Yankwitt
Benjamin Allee