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December 15, 2007

To Hon. Thomas Colwell and Faythe Smith and Roger Proper, Members of the Germantown Board of Ethics:

Under the provisions of Local Law No. 1 of the year 1992, I am submitting a request for a ruling on the ethical conduct of an employee of Germantown, NY.

On or about October 25, 2007, The Register-Star, the newspaper of record for Germantown, published a letter critical of a candidate for the Town Council, Arthur Schiff. The letter was signed/Austin Sullivan Administrative assistant to the supervisor Germantown. (See attachment A.) I am attaching (B) an article about the event that triggered the letter; it is from The Independent.

With respect to political activities of state employees, the New York State Ethics Commission in **Advisory Opinion No. 98-12 (See Attachment C.)** stated the following:

The Commission has not previously issued a formal opinion describing the political activities in which a State officer or employee may engage. This opinion, therefore, offers guidance on this important subject.

Pursuant to the authority vested in it by Executive Law §94(15), the Commission renders its opinion that the State employee may work on political campaigns, but his activities are subject to certain restrictions arising from his obligation to avoid a conflict of interest or the appearance of a conflict in violation of Public Officers Law §74.

In Advisory Opinion 98-12, The New York State Board of Ethics stated the following: (Sections of Germantown Local Law 1 that mirror the state statutes are shown in brackets []).

The State's Code of Ethics, contained in Public Officers Law §74, prohibits a State officer or employee from engaging in activities having a conflict of interest or the appearance of a conflict with respect to his or her public responsibilities. The rule regarding to conflicts of interest is provided in Public Officers Law §74(2):

No officer or employee of a state agency . . . should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest. [Same as Section 4 (a) Germantown Local Law 1]

Following the rule with respect to conflicts of interest, Public Officers Law §74(3) provides standards of conduct which address actual as well as apparent conflicts of interest. Of relevance to this inquiry are the following:

(d) No officer or employee of a state agency . . . should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others. [Same as Section 4 (f) Germantown Local Law 1]

(f) An officer or employee of a state agency . . . should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person. [Up to 'official duties, Same as Section 4 (h) Germantown Local Law 1]

(h) An officer or employee of a state agency . . . should endeavor to pursue a course of conduct, which will not raise suspicion among the public that he is likely to be engaged in acts in violation of his trust. [Same as Section 4 (j) Germantown Local Law 1]

These provisions address not only actual conflicts of interests, but also conduct that gives the impression that a conflict exists. The law is intended to enhance the public's trust and confidence in government through the prevention of corruption, favoritism, undue influence and abuse of official position.

The Commission states:

In addition to the above restrictions, no State employee may use his official title, position or authority in any campaign activities, including untargeted mass mailings. (Emphasis added.) This statement is at the top of page five of 98-12.

The Germantown Board of Ethics has not issued any opinions relating to the political activities of town employees. It is averred here that the Germantown Town Council having relied on Public Officers Law §74 in establishing Local Law 1 of 1992, will apply its Advisory Opinion to the present circumstance. As a personal note, I believe a fair reading of the text of the letter would lead one to conclude the purpose of the letter was to disparage my character and my candidacy.

As I mentioned, I am sending as Attachment C the entire text of Advisory Opinion 94-12.

As the affected party in this matter, I am requesting The Germantown Board of Ethics rule on the conduct of the above named employee in sending the attached letter to a newspaper published and distributed in the community in the middle of a political campaign. I am further requesting that the Germantown Board of Ethics inform me of the outcome of their consideration of this matter. I will cooperate in any manner you request.

Cordially yours,

Arthur Schiff