

## Local Government Ethics Law

### Opinions of the Office of the Attorney General

Subject: **Whether Commissioners of County Boards of Taxation  
Are Subject to Local Government Ethics Law**

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November 18, 1991

Barry Skokowski, Sr.  
Deputy Commissioner  
Department of Community Affairs  
101 South Broad Street  
Trenton, New Jersey 08625

Re: 91-0141: Whether Commissioners of  
County Boards of Taxation are subject  
to Local Government Ethics Law

Dear Deputy Commissioner Skokowski:

The question has arisen as to whether the Commissioners of County Boards of Taxation are required to file financial disclosure statements pursuant to the Local Government Ethics Law (P.L. 1991, c. 29; N.J.S.A. 40A:9-22.1 et seq.). Please be advised that the Commissioners of County Boards of Taxation are not "local government officers" pursuant to N.J.S.A. 40A:9-22-3(g) and accordingly they are not required to file financial disclosure statements. Rather, the Commissioners are State officers or employees subject to the requirements of the State's Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq.

N.J.S.A. 40A:9-22.6 provides that "[l]ocal government officers shall annually file a financial disclosure statement." N.J.S.A. 40A:9-22.3(g) in turn, defines a local government officer

as follows:

"Local government officer" means any person whether compensated or not, whether part-time or full-time: (1) elected to any office of a local government agency; (2) serving on a local government agency which has the authority to enact ordinances, approve development applications or grant zoning variances; (3) who is a member of an independent municipal, county or regional authority; or (4) who is a managerial executive or confidential employee of a local government agency, as defined in section 3 of the "New Jersey Employer-Employee Relations Act," P.L. 1942, c. 100 (C. 34:13A-3), but shall not mean any employee of a school district or member or a school board;

Initially the determination is whether the Commissioners of County Board of Taxation serve a "local government agency." A "local Government agency" includes

any agency, board, governing body, including the chief executive officer, bureau, division, office, commission, or other instrumentality within a county or municipality, and any independent local authority, including any entity created by more than one county or municipality which performs functions other than of a purely advisory nature, but shall not include a school board. [N.J.S.A. 40A:9-22.3(e)].

However, County Boards of Taxation established pursuant to N.J.S.A. 54:3-2 are State rather than local government agencies. *Warren v. Hudson County*, 135 N.J.L. 178, 180 (E. & A. 1947); *Defeo v. Smith*, 31 N.J. Super. 474 (1954), rev'd. on other grounds, 17 N.J. 183 (1955). Further, the Executive Commission on Ethical Standards in its implementation of the State Conflicts of Interest Law has determined that the Commissioners of County Boards of Taxation are State officers and employees. See Executive Commission on Ethical Standards Advisory Opinion No. 33, (September 17, 1975). (Attached). Accordingly, the County Boards of Taxation are not "local government agencies" within the meaning of the Local Government Ethics Law. It follows that the Commissioners are not subject to Local Government Ethics Law as they do not serve a

"local government agency."

In conclusion, you are advised that Commissioners of County Boards of Taxation are not "local government officers," and accordingly the Commissioners are not required to file financial disclosure statements pursuant to the Local Government Ethics Law. However, the Commissioners are State officers or employees subject to the requirements of the State's Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq.

Very truly yours,

ROBERT J. DEL TUFO  
ATTORNEY GENERAL OF NEW JERSEY

By: \_\_\_\_\_  
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Senior Deputy Attorney General

JJC:rb  
c: Stephen M. Sylvester, Assistant Director,  
Division of Taxation  
Executive Commission on

Ethical Standards

Advisory Opinion No. 33

The Executive Commission on Ethical Standards has been asked for advice on whether it would be a conflict of interest for a member of a County Board of Taxation, who is the President and primary stockholder of a real estate and insurance firm, to participate in hearing tax appeals when:

- (1) the petitioning taxpayer or the assessor for the responding municipality is a client of his firm;
- (2) the attorney for the taxpayer or for the municipality is a client of his firm; or
- (3) the assessor of the responding city is his relative.

In responding to those questions, it must initially be determined whether members of the County Boards of Taxation are "State officers or employees" or "special State officers and employees" as those terms are used in the Conflicts of Interest Law. State officer or employee" is defined in N.J.S.A. 52:13D-13 to mean

"(b) ... any person, other than & member of the Legislature, holding an office or employment in a State agency, ..." (Emphasis added).

"State agency" is defined in the same section to mean

"(a) ... any of the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch, and any independent State authority, commission, instrumentality or agency. A county or municipality shall not be deemed an agency or instrumentality of the State."

A review of the statutes pertaining to County Boards at Taxation reveal that they "are creatures of the Legislature" created by N.J.S.A. 54:3-1. *Baldwin Construction Co. v. Essex County Board of Taxation*, 28 N.J. Super. 110, 116 (App. Div. 1953); *Board of Taxation of Essex County v. Bellville*, 92 N.J. Super. 338, 342 (Law Div. 1966). The members of the county boards of taxation are appointed by the Governor with the advice and consent of the Senate. N.J.S.A. 54:3-2. Their salaries are paid by the State Treasurer upon warrants drawn by the Director of the Division of Budget and Accounting and are specifically fixed by statute. N.J.S.A. 54:3-6.

In 1946, the Court of Errors and Appeals commented on the nature of these Boards in *Warren v. Hudson County*, 135 N.J.L. 178 (E. & A. 1946), where it stated:

"The county boards of taxation are an integral part of the State tax system and as such their status is necessarily that of State agencies having specified functions in the

administration of a system for the assessment and collection of taxes." Id. at

A similar statement is found in the Appellate Division decision in *DeFeo v Smith*, 31 N.J. Super. 474 (App. Div. 1954), rev'd on other grounds, 17 N.J. 183 (1955) where the court said:

"The county board of taxation is not subordinate to the board of chosen freeholders. While the county board of taxation exercises a jurisdiction that is confined with definite territorial limits, its duties concern the State at large in a government field of major importance .... Its status is necessarily of a State agency having specific functions in the administration of a system for the assessment and collections of taxes." Id at

After reviewing the statutes and judicial decisions pertaining to County Board of Taxation and the legal advice requested by this Commission from the Attorney General, it is our conclusion that County Boards of Taxation are State agencies and that the members and employees of these boards are subject to the N. J. Conflicts of Interest Law.

In addition to the standards of conduct contained in the Conflicts of Interest Law itself, that law also requires the head of each State agency to adopt a code of ethics to govern and guide the conduct of those State officers and employees within the agency. N.J.S.A. 52:13D-23. For those instrumentalities within and under the control of a principal department in the Executive Branch of State Government the duty to adopt a code of ethics is on the department head unless he assigns the performance of this duty to the principal officers of specified instrumentalities within his department. For those independent State instrumentalities who are within a principal department for administrative purposes only, the duty is on the head of that instrumentality to prepare the required code of ethics. In such cases, the instrumentality may either adopt its own code of ethics or, if suitable, the one promulgated by the department in which the instrumentality is situated.

Each code of ethics must both conform to the general standards set forth in N.J.S.A. 52:13D-23(e) and contain provisions formulated with respect to the particular needs and problems of the agency to which said code is applicable. N.J.S.A. 52:13D-23(a). Each code must be reviewed by the Attorney General

to determine its compliance with the provisions of the Conflicts Law and any other applicable provisions of law. To assure its suitability and adequacy, it also must be approved by this Commission, N.J.S.A. 52:13D-23(a), which has the continuing responsibility of reviewing and recommending changes in the codes adopted throughout the Executive Branch of State Government. N.J.S.A. 52:13D-21(d).

In the case of the County Boards of Taxation, the Executive Commission has not received any codes of ethics from these Boards. Presumably this is due to the fact that they either consider themselves to be governed by the code of ethics of the Department of Treasury or were unaware of the requirement of the Conflicts Law. In either case, this Commission must now determine whether a code of ethics exists governing the conduct of Boards of Taxation and their employees.

The County Boards of Taxation are located in the Department of Treasury which has adopted a code of ethics governing "all officers and employees of the Department." Although this would seem to include the members and employees of the County Boards of Taxation, a review of the Department's code demonstrates that it was not intended to cover the conduct of these individuals nor was it formulated with respect to the particular needs and problems of \_\_\_\_\_ Boards. This is evidenced by the various provisions that \_\_\_\_\_ persons to make specified disclosures to, and obtain approval from their Division Director. Since the County Boards of Taxation are not situated within any division in the Department of Treasury, it is apparent that these provisions are inappropriate when applied to them. The inapplicability of the Department code to these Boards is also demonstrated by the fact that this Commission is aware of no attempt by the Department to apply these provisions to the County Boards. But more importantly, the departmental code contains a noticeable absence of any provisions that take cognizance of the peculiar needs and problems of these Boards. For these reasons, this Commission has concluded that the code of ethics of the Department of Treasury is not applicable to the County Boards of Taxation in that Department. The State Treasurer, therefore, must adopt a code of ethics covering the members and employees of the County Boards or each Board must adopt it's own code of ethics. Because all of the County Boards face similar conflict of interest problems, this Commission recommends that the Boards consult with one another and recommend one code of ethics that can be promulgated by the State Treasurer as a uniform code for all Boards.

The future promulgation of a code of ethics for the County Boards of Taxation, however, does not resolve the present

problem. The mandate of the Conflicts Law is that a code of ethics be adopted within six months of the date on which the law was enacted. N.J.S.A. 57:13D-23. Although the Legislature did not specifically provide a means to enforce this mandate or state what would occur if a code were not adopted within the six month period, it should not be presumed that the Legislature intended to perform an idle gesture in requiring the adoption of a code of ethics and specifying the time period in which it was to be adopted. The Legislative intent is clear. It directed that a code of ethics be adopted within six months of the enactment of the law and specified the standards to be placed in each code. Since an appropriate code of ethics has not been adopted within the prescribed time period, it now becomes the duty of this Commission to effectuate the Legislative will by declaring the standards contained in N.J.S.A. 52:13D-23(e), which the Legislature required to be placed in each code, to be the code of ethics for each County Board of Taxation until an appropriate code or codes is duly adopted and approved. This course of action is the most suitable method for implementing the apparent legislative intent since it carries out the requirement that a code be adopted while still affording the agency the opportunity of formulating and adopting a code better geared to its peculiar needs and problems.

Having decided these preliminary questions, attention may now be directed at the specific questions posed by the requester. These questions ask whether a member of a county board of taxation may participate in the hearing of tax appeals in the situations outlined above. N.J.S.A. 52:13D-23(e) provides that a code of ethics would conform to the following general standards:

"(1) No State officer or employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest

....

(4) No State officer or employee should act in his official capacity in any matter wherein he has a direct or indirect personal financial interest that might reasonably be expected to impair his objectivity or independence of judgment....

(7) No State officer or employee should knowingly act in any way that might reasonably

be expected to create an impression or suspicion among the public having knowledge of his acts that he may be engaged in conduct violative of his trust as a State officer or employee. "

The question of what is a direct or indirect personal financial interest that would require disqualification (as it would impair the official's objectivity) is factual, depending upon the circumstances of the particular case. *Van Itallie v. Franklin Lakes*, 28 N.J. 258, 268 (1958); *Township Committee of Township of Nazlet v. Morales*, 119 N.J. Super. 29 (Law Div. 1972); *Aldom v. Roseland*, 42 N.J. Super. 495, 503 (App. Div. 1956). The issue is whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the official to depart from his sworn public duty. *Griggs v. Princeton Borough*, 33 N.J. 207, 219 (1960); *Van Itallie v. Franklin Lakes*, supra 28 N.J. at 268; *Township Committee of Township of Hazlet v. Morales*, supra, 119 N.J. Super. at 33. Actual proof of dishonesty need not be shown. *LaRue v. East Brunswick*, 68 N.J. Super. 435, 447 (App. Div. 1961); *S. & L. Associates, Inc. v. Washington Tp.*, 61 N.J. Super. 312, 329 (App. Div. 1960), aff'd in part, rev'd in part, 35 N.J. 224; *Aldom v. Roseland*, supra, 42 N.J. Super. at 503.

In the situation involving the petitioning taxpayer who is a client of a County Board of Taxation member's real estate and insurance firm, a clear violation of the above quoted statute is presented. A determination of the assessed valuation in such a case would probably have an effect on the petitioner's insurance coverage and thus directly involve the member's business relationship with the taxpayer. Therefore, the member of the County Board of Taxation would disqualify himself as he would have an indirect personal financial interest which could reasonably be expected to impair \_\_\_\_\_ objectivity or independence of judgment.

For the member of the County Board of Taxation to have a direct or indirect personal financial interest that would give rise to a conflict of interest in situations when the assessor or the attorney for the responding municipality, or the attorney for the taxpayer is a client of the member's firm, it is not necessary to show a direct or indirect personal financial interest flowing immediately to the board member. See *Aldom v. Borough of Roseland*, supra. In the three aforementioned situations, there is a strong possibility that the board member's financial interest would be affected by his decision in tax appeals involving these clients of his firm. For example, if the member determined a low assess



valuation in an appeal involving one of his clients, the client would be inclined to increase his business dealings with the board member's firm. Thus it can be said that when the board member hears a tax appeal and the attorney or the assessor for the municipality, or the attorney for the taxpayer, is a client of his real estate and insurance firm, the member should not act in his official capacity as he has an indirect personal financial interest that would reasonably be expected to impair his objectivity.

Since the board member may advance his private interests by his own official decisions, he would be unlikely to consistently advance the best interests of the public even if his intentions were of the highest nature. The hearing of tax appeals in the three aforementioned instances would therefore be in substantial conflict with the proper discharge of his duties in the public interest and might reasonably be expected to create an impression or suspicion among members of the public having knowledge of his acts that he may be engaged in conduct violative of his trust as a State officer. For these additional reasons, he should disqualify himself from hearing such tax appeals.

While there is no ease, statute or rule precisely on point as to whether a County Board of Taxation member may participate in hearing tax appeals when the assessor of the responding city in his relation, the Commission is not without authoritative guidance. Sufficient direction is furnished by State v. Deutsch, 34 N.J. 190 (1961); N.J.S.A. 2A:15-49(a); Rule 1:12-1(a) and (b); and Canon 13 of the Canons of Judicial Ethics.

In State v Deutsch, the New Jersey Supreme Court held that the judge in a criminal case should have disqualified himself because he was a brother of the prosecutor.

N.J.S.A. 2A:15-49(a) provides:

"No judge of any court shall sit on the trial of or argument of any matter in controversy pending in his court, when he: Is related in the third degree to any of the expertise to the action, which degree shall be computed as at common law."

Rule 1:12-1 is even broader. It provides in pertinent part:

"The judge of any court shall disqualify himself on his own motion and shall not sit in

any matter if he

(a) is by blood or marriage the second cousin of or is more closely related to any party to the action;

(b) is by blood or marriage the first cousin of or is more closely related to any attorney in the action. This proscription shall extend to the partners, employers, employees or office associates or any such attorney except where the Chief Justice for good cause otherwise permits,"

Canon 13 reads:

"A judge should not act in a controversy where a near relative is a party; he should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor, or that he is affected by the kinship, rank, position or influence of any party or other person."

Rule 1:12-1 makes the Canons of Judicial Ethics applicable to judges of this State. See *Kremer v. City of Plainfield*, 101 N.J. Super. 346 (Law Div. 1968). In discussing the applicability of the foregoing case, statute and rules, Judge Wood in *Kremer v. City of Plainfield*, *supra*, said:

"While the authorities I have cited apply specifically only to judges, there is no sound reason why a lesser standard should govern the conduct of those acting in a judicial capacity. The need for unquestionable integrity, objectivity and impartiality is just as great for quasi-judicial personnel as for judges." 101 N.J. Super. at 352-353.

Therefore, a member of a County Board of Taxation, acting in a quasi-judicial capacity when hearing a tax appeal, (see *Del. L. & in. R.R. v. City of Hoboken*, 10 N.J. 418 (1952)) must disqualify himself when the assessor of the responding city is a second cousin for related in the third degree at common law) or is more closely related to the board member.

"It [is] argued that establishment of the principle we are announcing would deserve the

public interest because it might operate to influence substantial and civic-minded citizens, who have outside business connections, against membership in elective or appointive public agencies. That result is extremely doubtful. The rule disqualifies only where personal and public loyalties come into conflict. In those rare instances such high-minded persons undoubtedly, will welcome the disqualification." Aldom v. Borough of Roseland, supra at 508.

In summary, it is the conclusion of this Commission that a member of a County Board of Taxation is subject to the Conflicts of Interest Law and the standards contained in N.J.S.A. 52:13D-23(e). He must therefore disqualify himself from hearing tax appeals when

- (1) the petitioning taxpayer or the assessor for the responding municipality is a client of his firm;
- (2) the attorney for the taxpayer or for the municipality is a client of his firm; or
- (3) the assessor of the responding city is his second cousin (or related in the third degree at common law) or is more closely related to the board member.

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JOHN A. WADDINGTON  
Chairman - Executive Commission  
on Ethical Standards