

Local Government Ethics Law

Opinions of the Office of the Attorney General

Subject: **Whether a Local Ethics Board may Require "Local Government Employees" to file Financial Disclosure Statements**

The following is the full text of advice issued by the Office of the Attorney General and received by the Local Finance Board. The content is a verbatim reproduction of the document received by the Board. It has been reformatted to make it accessible to the public through the Board's web site.

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March 4, 1993

Barry Skokowski, Sr.
Deputy Commissioner
Department of Community Affairs
CN 800
Trenton, New Jersey 08625-0800

Re: 93-0022: Whether a Local Ethics Board may
Require "Local Government Employees" to file
Financial Disclosure Statements

Dear Deputy Commissioner Skokowski:

You have requested advice as to whether a local ethics board may require "local government employees" to file annual financial disclosure statements. For the below stated reasons you are advised that pursuant to the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq., the requirement for filing annual financial disclosure forms applies only to "local government officers" and a local ethics board is without authority to extend the requirement for filing financial disclosure statements to "local government employees."

The Local Government Ethics Law was enacted on February 20, 1991 and became effective 90 days thereafter on May 21, 1991. L. 1991, c. 29, §27. The purpose of the Act is to provide a statewide standard governing the ethical conduct of local government officers and employees and requiring annual financial disclosure by local

government officers. N.J.S.A. 40A:9-22.2(e). To effect this purpose the Legislature has established a statewide Code of Ethics applicable to local government officers and employees. N.J.S.A. 40A:9-22.5. In the absence of action by the local government to establish a local ethics board, the Code of Ethics is enforced by the Local Finance Board in the Department of Community Affairs. N.J.S.A. 40A:9-22.4. Further, the Local Finance Board exercises appellate jurisdiction over the decisions of the local ethics boards. N.J.S.A. 40A:9-22.18, N.J.S.A. 40A:9-22.24.

A local government may elect to administer and enforce the Code of Ethics established by the Local Government Ethics Law. N.J.S.A. 40A:9-22.13, N.J.S.A. 40A:9-22.19. Specifically, the local government may establish a local ethics board. N.J.S.A. 40A:9-22.13(a), N.J.S.A. 40A:9-22.19(a). The local ethics board is required to promulgate by resolution a code of ethics for all "local government officers and employees" serving the local government. The ethics code promulgated by the local ethics board shall either be identical to the State ethics code provided by N.J.S.A. 40A:9-22.5 or more restrictive than the State ethics code, subject to the approval of the Local Finance Board. N.J.S.A. 40A:9-22.15, N.J.S.A. 40A:9-22.21.

In addition to adhering to the ethical requirements set forth by the State code or any applicable local code, a "local government officer" is required to file annually a financial disclosure statement, N.J.S.A. 40A:9-22.6, which contains information about the officer's source of income, certain business interests, and real estate holdings in New Jersey. Ibid. The requirement for filing an annual financial disclosure statement is applicable only to "local government officers" and not to "local government employees." Ibid.

While the Local Government Ethics Law specifically permits a local ethics board to promulgate a code of ethics more restrictive than the State code of ethics, the Law does not similarly permit a local ethics board to go beyond the legislative mandate and require persons, other than "local government officers", to file annual financial disclosure statements. In Attorney General Opinion No. 91-0136 (May 19, 1992) we stated that the Local Government Ethics Law had preempted the field of local ethics and that a local government may not regulate the area in a manner inconsistent with the State law.

It follows that a local ethics board may not similarly exceed the legislative mandate. While the requirement for local government officers to file annual financial disclosure is one of

the purposes of the Local Government Ethics Law, the disclosure requirement is separate and distinct from the Code of Ethics. N.J.S.A. 40A:9-22.5, N.J.S.A. 40A:9-22.6. The Legislature in specific terms has permitted a local ethics board to promulgate a local code of ethics more restrictive than the State code. N.J.S.A. 40A:9-22.15, N.J.S.A. 40A:9-22.21. The Legislature did not similarly permit a local ethics board to require "local government employees" to file financial disclosure forms.

Further, one of the purposes of the Local Government Ethics Law is to provide for the uniform application of the Law. N.J.S.A. 40A:9-22.2(e). To permit each individual local ethics board to extend the requirements of the Law, beyond what the Legislature has specifically authorized, does not promote the uniform application of the Local Government Ethics Law.

For the above stated reasons, you are advised that, absent a legislative change, a local ethics board is without authority to require "local government employees" to file financial disclosure statements. Rather, the Legislature in enacting the Local Government Ethics Law has limited the requirement for filing of financial disclosure statements to "local government officers."

Very truly yours,

ROBERT J. DEL TUFO
ATTORNEY GENERAL OF NEW JERSEY

By: _____
John J. Chernoski
Deputy Attorney General