



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 803
TRENTON, NJ 08625-0803

LOCAL GOVERNMENT ETHICS LAW

Public Advisory Opinions

Advisory opinions issued by the Local Finance Board are confidential matters. However, the Local Government Ethics Law provides that the Board may vote to make an advisory opinion public by a two-thirds vote of its members (N.J.S.A. 40A:9-22.8). Opinions that are made public by the Board shall not disclose the name of the local government officer or employee unless the Board determines that the name shall be disclosed.

Contained herein are the advisory opinions that the Local Finance Board has voted to make public, pursuant to N.J.S.A. 40A:9-22.8. The public opinions have been divided into five separate categories, which are (1) self-interest, (2) familial relationship, (3) legal or business conflicts, (4) incompatibility of office/outside employment, and (5) other.

By sharing the Board's opinion on the applicability of the Local Government Ethics Law to several similar questions, local officials and municipal attorneys may be better equipped to address potential ethics issues.

NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS
Division of Local Government Services
Local Finance Board
<http://www.state.nj.us/dea/divisions/dlgs/programs/ethics.html>



SELF-INTEREST/PURCHASES/CONTRACTS

	File Number	Question Presented	Board's Opinion	40A:9-22.5 Reference
1	91-001	Whether a member of the Township Planning Board, who holds an interest in a hardware business, may do business with the same municipality in which he serves.	Not prohibited by the Local Government Ethics Law	(a), (c)
2	91-009	Whether a firm may submit a bid to the Township for the performance of professional services to prepare a tax map if the spouse of a principal of the firm is employed as the Planning and Zoning Board Secretary for the same municipality.	Not prohibited by the Local Government Ethics Law	(a), (c)
3	92-009	Whether a member of the Board of Adjustment may be awarded a contract for computer service by the same local government in which he serves.	Not prohibited by the Local Government Ethics Law	(a), (c)
4	92-011	Whether a member of the Borough Council, who owns a cleaning service, may participate in drafting bid specifications for cleaning services, or if a member of the Council may submit a bid to the Borough if he or she does not participate in drafting the bid specs.	Prohibited by the Local Government Ethics Law	(c), (d)
5	92-015	Whether, if elected to the borough Council, an individual may continue to sell auto parts via State Contract to the Borough's Public Works, Fire and Police Departments	Prohibited by the Local Government Ethics Law	(a), (c)
6	04-001	May the spouse of the Mayor make applications for various permits on behalf of clients to the Township in which her husband is the Mayor. Mayor does not have any contact or interaction with the permit process.	Prohibited by the Local Government Ethics Law	(a)

7	07-009	May a municipality enter into a contract with an entity in which a member of the governing body has a 50% interest, if the entity is the lowest bidder and if the member of the governing body recuses himself from all matters related to the award of the contract.	Prohibited by the Local Government Ethics Law.	(a)
8	10-013	Whether a company may submit a sealed bid to the county board of chosen freeholders for the contract to remove deer carcasses from county roads when the owner of the company is also a member of the board of chosen freeholders.	Prohibited by the Local Government Ethics Law.	(a)
9	11-007	Whether a municipal police officer, who owns a computer service business in his private capacity, may provide computer services to the municipality he serves as a police officer.	Prohibited by the Local Government Ethics Law.	(c)
10	11-008	Whether a member of the governing body, who is a veterinarian in his private capacity, may provide animal shelter services to the municipality provided that he does not charge the municipality for the services.	Prohibited by the Local Government Ethics Law.	(a), (e)
11	12-001	Whether a governing body member may provide towing services to the municipality he serves.	Prohibited by the Local Government Ethics Law.	(d), (e)
12	12-013	Whether a member of the zoning board of adjustment, whose spouse is an elected official in the municipality, may enter into a contract with the municipality to perform professional land surveying services unrelated to matters contemplated by the zoning board of adjustment.	Prohibited by the Local Government Ethics Law.	(a), (d), (e), (h)



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JIM FLORIO
GOVERNOR

MELVIN R. PRIMA
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Barry Sakowski, Sr., Chairman

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- Robert H. Gismere
- Stanley Iacono
- Joseph Iannaconi, Jr.
- Robert C. Miller
- Harold F. Mullin
- Susan L. Nickolopoulos

Re: Local Government Ethics Law
Advisory Opinion 91-001

Dear

The Local Finance Board (Board) has reviewed your request seeking an advisory opinion regarding the Local Government Ethics Law. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the law.

You have inquired as to whether or not a member of the Planning Board, holding an interest in a hardware business, may do business with the same municipality in which he serves.

Under the provision of N.J.S.A. 40A:9-22.5(a.),

No local government officer or employee or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest.



February 14, 1992
Page 2

The business described in your letter is that of a retail hardware store located in an adjacent municipality. The purchases made by the Township are based upon competitive prices under State Contract. It would appear that the goods and commodities sold to the Township are not those necessarily consumed by the Planning Board. Therefore, it does not appear that this relationship would cause substantial conflict with the proper discharge of the duties of a planning board member acting in the public interest.

Under the provision of N.J.S.A. 40A:9-22.5 (c.),

No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others.

The fact that a member of the planning board does business with the same municipality may raise a question as to how this business was secured. The business owners have obtained status as a State Contractor. Competitive bids had to be submitted to obtain such status. The probability of an official being able to secure unwarranted privileges using his official position seems remote when weighing the fact of "State Contractor" status and the process that is entailed to obtain such status. Therefore, it does not appear that this official has secured unwarranted privileges.

In conclusion, the Local Finance Board has determined that the proposed activity would not constitute a violation of the Local Government Ethics Law. However, you are cautioned not to apply this opinion to similar situations. Due to the fact-sensitive nature of each circumstance, an advisory opinion may only be applied to the question at issue.

If you have any questions regarding this matter, please feel free to contact Patricia Parkin McNamara at (609) 633-6344.

Sincerely,



Barry Skokowski, Sr. Chairman,
Local Finance Board

BS:PPM:jak



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION OF LOCAL GOVERNMENT SERVICES
LOCAL FINANCE BOARD

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- Susan L. Nickolopoulos

April 20, 1992

Re: Local Government Ethics Law
Advisory Opinion #LFB91-009

Dear

The Local Finance Board (Board) has received your request seeking an advisory opinion regarding the Local Government Ethics Law. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the law.

You have inquired as to whether your firm, _____ may submit a bid to the Township of _____ for the performance of professional services to prepare a tax map if your spouse is employed as the Planning and Zoning Board Secretary for the same municipality.

Under the provisions of N.J.S.A. 40A:9-22.5 (a) it states:

No local government officer or employee or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest.



April 20, 1992

Page 2

The Local Government Ethics Law is intended to address matters that would constitute a substantive conflict. The fact that your spouse is employed by the Township of _____ on its face, is not reason to conclude that the interest in a business is of the magnitude to substantially conflict with the public duties of your spouse. Rather, a fact sensitive determination must be made. Based upon the scope of duties performed by a spouse in the position of Planning and Zoning Board Secretary the question is whether or not the interest in _____ would be so compelling as to cause a substantial conflict that would render your spouse unable to properly discharge her duties as the Planning and Zoning Board Secretary.

Generally, the duties of a Planning and Zoning Board secretary do not pertain to preparation of a tax map. This is usually the primary responsibility of the Tax Assessor and Municipal Engineer. Your letter indicated that your spouse would not be performing any public duties associated with the Tax Assessor's office and would not be performing any public duties for any services rendered by _____. Thus, the public duties performed by your spouse as the Planning and Zoning Board Secretary should not pose a substantial conflict with the proper discharge of her duties in the public interest.

A second tier to this issue is whether the local government employee, as a Planning and Zoning Board Secretary or a member of the local Board of Health, is able to use that official position to secure an unwarranted privilege or advantage. Specifically, having inside information not generally known to the public. For instance, a proposal submitted by the relative of a local government employee may have an advantage over others submitted. Under N.J.S.A. 40A:9-22.5 (c) it states:

No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others.

The primary question is how the proposal is secured by the Township. As a professional service, a proposal is not subject to public bidding requirements. The furnishing of tax maps is specifically excepted from the public bidding process as set forth in N.J.S.A. 40A:11-5 et seq. However, the request for proposal (RFP) may be a formal process whereby the Township may place an ad in a newspaper or it may be as informal via "word of mouth." It is possible that if the municipality decided to "formalize" the RFP process, thus causing the process to occur under public view, it is unlikely that an unwarranted privilege or advantage would be secured. On the contrary, if the RFP is secured via "word of mouth", then it is quite possible that a local government employee could secure an unwarranted privilege or advantage through insider information available from the Township. The fact that the Planning and Zoning Board Secretary and member of a Board of Health have no direct knowledge of the Township's intent to seek RFP's is not sufficient enough to conclude that such an occurrence would not be possible. The secretary or Board of Health member could still become aware of the Township committee's intention to seek proposals for such work simply by their presence as an employee or officer.

April 20, 1992

Page 3

Thus, the question hinges on the manner in which proposals are obtained. In your letter you indicated that the Township was soliciting proposals for the work in the form of quotations. The quotations are to be obtained from a number of Qualified bidders. The contract would then be awarded to the lowest responsible bidder. Having considered this particular situation, it would appear that such a process would not necessarily provide an opportunity to secure an unwarranted privilege or advantage as a local government employee.

In conclusion, the Board has determined that the proposed activity, that of submitting a proposal for professional services to prepare a tax map, would not constitute a violation of the Local Government Ethics Law. The facts and circumstances of a spouse's employment with the Township in the position of Planning and Zoning Board Secretary and a son serving as a member of the Board of Health and the possibility of the firm of, Associates, of providing professional services to the Township of specifically, through the Tax Assessor's office, does not appear to constitute a substantial conflict that would impact upon the proper discharge of public duties by a spouse as the Planning and Zoning Board Secretary or a son who is a member of the Board of Health.

This determination is based solely upon the facts detailed in your correspondence. You are cautioned not to apply this opinion to similar situations. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the question at issue.

If you have any questions regarding this matter, please feel free to contact Patricia Parkin McNamara at (609) 633-6344.

Sincerely,



Barry Skokowski, Sr., Chairman
Local Finance Board

BS:PPM:jak



State of New Jersey

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June 19, 1992

Re: Local Government Ethics Law
Advisory Opinion # 92-009

Dear Mr. _____

The Local Finance Board (Board) has reviewed your request for an advisory opinion regarding the Local Government Ethics Law.

You have inquired as to whether a member of the Board of Adjustment may be awarded a contract for computer services for the same local government in which he serves. The Board has determined that such a proposed activity would not constitute a violation of the Local Government Ethics Law. The Board has based its determination upon the following analysis.

Under N.J.S.A. 40A:9-22.5 (a) it states:

No local government officer or employee or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest.



June 19, 1992

Page 2

The Local Government Ethics Law is intended to address matters that would constitute a substantive conflict. The question is whether a member of the Board of Adjustment, engaging in a business activity with the Township, would be in substantial conflict with the proper discharge of his duties in the public interest. An examination of the scope of duties of a member of the Board of Adjustment and the relationship to the scope of computer services is required. The powers of a Board of Adjustment are statutorily limited in N.J.S.A. 40:55D-70. The Board may hear and decide appeals, interpret the zoning map and grant variances.

You have not indicated in your letter if the scope of computer services would pertain to the functions of the Board of Adjustment. You have indicated that many of the municipal offices will be computerized. Typically, the computerization of an office would encompass the installation of a hardware system and software relating to the functions of that particular municipal office. This could include the Clerk, Tax Assessment, Tax Collection, Finance, and Planning and Zoning Offices.

With the exception of the Zoning Office, any business activity involving computer services would not transact with the duties of a member of the Board of Adjustment. There would not be a causative effect, that of substantial conflict, between the provision of computer services and the proper discharge of duties in the public interest as a member of the Board of Adjustment, as long as the services do not include the Zoning Office.

However, how the business has been secured by a member of the Board of Adjustment is another matter which is addressed by the Local Government Ethics Law. Under N.J.S.A. 40A:9-22.5 (c), it states:

No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others.

You have indicated in your letter that bids will be secured in compliance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. The Local Public Contracts law sets forth various requirements. Should the scope of services be limited to the installation of hardware and software systems, then the service would be subject to the various bidding requirements. On the other hand, if the scope of services is broad and would encompass a management consultant study, then this would qualify as an "extraordinary, unspecifiable service" which would not be subject to open competitive bidding. At no time, however, could computer services or consulting be considered a professional service under the Local Public Contracts Law.

June 19, 1992
Page 3

Purchasing requirements under the Local Public Contracts Law provide latitude in the manner in which bids may be secured. More stringent requirements must be followed for goods and services that reach the bid threshold of \$10,400. Such goods and services must be publicly advertised. The bids must be opened in public. Such a procedure forces a competitive process to occur. The Board of Adjustment member would be required to bid on standard specifications, bids would be opened in public; and, in order to be the successful bidder, he or she would have to meet all of the bid requirements. Such an open competitive process provides safeguards against a local government officer securing an unwarranted privilege for himself.

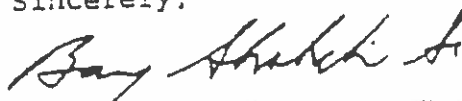
If the cost of the goods or services are less than the bid threshold, a more informal process is required under the Local Public Contracts Law. It is at this juncture that a local government officer has the greatest opportunity to secure an unwarranted privilege or advantage for himself or others. The primary question is the method the Township plans to utilize to secure bids under this circumstance. If the cost is more than \$1,000 the Township must obtain "price quotes." This is a rather informal process. Quotes may be obtained via telephone requests, written, or by whatever method is necessary. This procedure can be manipulated very easily so that the "paper trail" appears as if the lowest bid is that submitted by the local government officer. A local government officer could secure an unwarranted privilege or advantage by having "inside information or an inside track." This informal bid process would not occur in full public view and could be awarded without the governing body's approval.

Thus, the conclusions that may be reached depend on the manner in which bids are secured. If the bids are secured through the open competitive process of being publicly advertised and opened, a local government officer would not have an opportunity to secure an unwarranted privilege or advantage over other bidders. It is under this circumstance that the Board advises that the Local Government Ethics Law would not be violated.

The Board cautions that this determination is based on the facts detailed in the correspondence. You are cautioned not to apply this opinion to similar situations and that, due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the question at issue.

If you have any further questions regarding this matter, please feel free to contact Patricia Parkin McNamara at (609) 533-6344.

Sincerely,



Barry Skokowski, Sr., Chairman
Local Finance Board



State of New Jersey

JIM FLORIO
GOVERNOR

DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION OF LOCAL GOVERNMENT SERVICES
LOCAL FINANCE BOARD

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August 10, 1992

Re: Local Government Ethics Law
Advisory Opinion # 92-011
Board Determination

Dear Mr.

The Local Finance Board (Board) has reviewed your request seeking an advisory opinion regarding the Local Government Ethics Law. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether a proposed activity or conduct would constitute a violation of the provisions of the law.

You have inquired as to whether a member of the Borough Council, who owns a cleaning service, may participate in drafting bid specifications for cleaning services or if a member of the Council may submit a bid to the Borough if he or she does not participate in drafting the bid specifications.

The Board has determined that both of the proposed activities would constitute a violation of the Local Government Ethics Law. The Board has based its determination on the following analysis.

A member of the Borough Council who wishes to participate in the drafting of bid specifications, knowing that he intends to submit a bid for said service, would stand to violate the following provision.



Under N.J.S.A. 40A:9-22.5 (d) it states:

No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgement.

The Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., sets forth various statutory requirements for public purchasing of goods and services. Standards for preparation of specifications are set forth in N.J.S.A. 40A:11-13. The law states:

Any specifications for an acquisition under this act, whether by purchase, contract or agreement, shall be drafted in a manner to encourage free, open and competitive bidding.

A specification is considered a concise statement of a set of requirements for a service to be performed. The preparation of specifications is not subject to public review. A municipality has latitude in the method utilized to develop specifications. While the expertise of a Council member, who owns a cleaning service, would help to ensure that concise specifications could be developed, those actions are counter to the provisions of the Local Government Ethics Law if he is intent on submitting a bid. A local government officer may not act in his or her official capacity on any matter where he or she has a direct financial interest that might reasonably be expected to impair his objectivity or independence of judgement. It is obvious that a local government officer, intending to submit a bid for cleaning services, holds a direct financial interest which could reasonably be expected to impair his objectivity or independence of judgement in recommending the scope of specifications.

A member of council may tailor the specifications, in his capacity as a local government officer, to suit his or her own cleaning service in order to succeed in the award of the service contract. In this instance, a local government officer holds a direct pecuniary interest. That is, the Council member would realize a direct financial gain. A representation that such a Council member is rendering "expert advice" on cleaning service specifications is unacceptable when the same Council member holds a direct pecuniary interest in the matter. A local government officer is expected to place official public interests above all others. The Borough may easily request and obtain sample specifications from the New Jersey League of Municipalities (League) to use as a guide for the preparation of cleaning service specifications. The League collects and retains sample specifications used by other municipalities.

The Board has determined that a Council member, who participate in the drafting of cleaning service specifications and who intends to submit a bid, would be in violation of the Local Government Ethics Law.

Secondly, a member of the Council, who owns a cleaning service, may not submit a bid to perform such a service for the municipality he serves. Such a situation may cause an official to yield to the temptation of a direct financial interest and may result in a violation of the following provision of the law.

Under N.J.S.A. 40A:9-22.5 (c) it states:

No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others.

The fact that a member of the Borough Council is bidding on cleaning services, to be provided to the Borough, may raise a question as to how the bid is secured. The Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., covers numerous issues pertaining to bidding requirements. The process of bidding is subject to various degrees of latitude. Should the service exceed the bid threshold of \$10,300, then the governing body is required to follow stringent public bidding requirements. When public bidding is not required, the governing body decides upon the procedure to be used to secure quotes. The Local Public Contracts Law, at N.J.S.A. 40A:11-6.1, requires an informal quote process for the solicitation of quotations on services costing more than \$1,000. Basically, a contracting unit's governing body must either advertise for bids and draft specifications, or request quotations by posting notices or simply contact vendors via the "yellow pages."

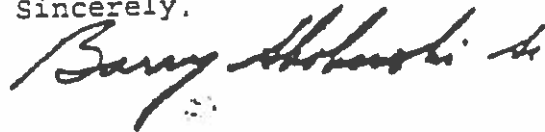
A member of the governing body, having an interest in a cleaning service, could use his or her official position to gain an advantage over others in choosing the means by which quotes would be secured. He or she could also utilize "insider information" as a result of serving as a local government officer and secure an unwarranted advantage over others who submit bids for cleaning services. A public official is disqualified from exercising the authority of his or her office in any matter in which he has a financial interest that conflicts with his public duty. Thus, a member of the Borough Council may not submit bids to the municipality in which he serves as a local government officer. Therefore, even the appearance of impropriety is avoided.

August 10, 1992
Page 4

Be advised that this opinion is limited to the specific facts described above. If there are additional facts relevant to the situation, please feel free to seek an additional opinion based on the new information. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the question at issue.

If you have any questions regarding this matter, please feel free to contact Patricia Parkin McNamara at (609) 633-6344.

Sincerely,



Barry Skokowski, Sr., Chairman
Local Finance Board

BS:PPM:jak



State of New Jersey

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- Harold F. Mullin
- Susan L. Nickolopoulos

July 8, 1992

Re: Local Government Ethics Law
Advisory Opinion #92-015
Board Determination

Dear _____:

The Local Finance Board (Board) has reviewed your request seeking an advisory opinion regarding the Local Government Ethics Law. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether a proposed activity or conduct would constitute a violation of the provisions of the law.

You have inquired as to whether, if elected to the Borough Council, you would be able to continue to sell auto parts, via a State contract, to the Borough Public Works, Fire and Police Departments.

The Board has determined that such a proposed activity would constitute a violation of the Local Government Ethics Law. The Board has based its determination upon the following analysis.

Under N.J.S.A. 40A:9-22.5 (a) it states:

No local government officer or employee or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest.

The business described is that of an auto parts retail store you own, which is located in the same municipality as you intend to seek public office. Auto parts would be sold to the Public Works, Fire, and Police Departments. In your letter, you estimate that total sales would be less than \$5,000 per year. Auto parts would be sold to the Borough as a vendor on State Contract under the State Cooperative Purchasing Program.

As a member of the governing body, it is necessary to examine the scope of duties entailed and to make a determination as to whether substantial conflict would be posed if auto parts were sold to various departments within the Borough. Pursuant to N.J.S.A. 40A:60-6 the powers of the council which could pose substantial conflict are:

- b. . . .control and regulate the finances of the municipality and raise money by borrowing or taxation.
- c. The council shall have all the executive responsibilities of the municipality not placed, by general law or this act, in the office of the mayor.

Additionally, N.J.S.A. 40A:60-7 provides miscellaneous powers:

- b. . . .If the council organizes itself into standing committees or if the council members serve as heads of departments with administrative control over said departments, the administrative code shall specify the powers and duties of such committees or department heads. . . .

A member of the governing body would be in the position of funding or approving an allocation for auto parts in the municipal budget. Further, in carrying out executive responsibilities, a member of the governing body could be in the position of determining whether public works, fire, and police vehicles should be repaired "in-house" thereby, necessitating auto parts, or if vehicle repair should be contracted with a private entity. A member of the governing body would not be able to participate in discussions having to do with vehicle repair, nor would he be able to vote on any matters pertaining to the funding or expenditure of funds for auto parts. He would not be able to act in his official capacity as a Borough Council member on any matters related.

A member of the governing body would not be able to serve as a department head over public works, fire, or police services if he intends to sell goods used by these departments to the Borough. It is established that he would hold a direct financial interest from which he would derive at least a portion of his income. Such an interest might reasonably be expected to impair his objectivity or independence of judgement. A member of the governing body would be disqualified from exercising the authority of his office in any matter in which he has a financial interest that conflicts with his public duty.

Additionally, if elected, as a member of the governing body you would propose to conduct business with the same municipality in which you serve. This may raise a question as to how the business was secured. Under N.J.S.A. 40A:9-22.5 (c) it states:

No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others.

You have indicated that you presently are participating in the State Cooperative Purchasing Program selling auto parts. As such, status is held as a State Contractor. As a Cooperative Purchasing Program Subscriber, the Borough may contact vendors directly. There is no need to seek further bids when utilizing a State Contract. A local government officer could recommend or direct an employee of the Borough to his business for selection from a list of vendors offering auto parts. The Borough could merely make a telephone call to your business to place the order under the "veil" of being a "State vendor." Such a relationship would provide an opportunity for an "appearance of impropriety" or, in its fullest potential, may constitute an act of impropriety.

In conclusion, the Board has determined that such a proposed activity would constitute a violation of the Local Government Ethics Law. If you succeed and are elected to the Borough Council, you may no longer continue as a State vendor for the Borough without violating the Local Government Ethics Law.

Be advised that this opinion is limited to the specific acts described above. If there are additional facts relevant to the situation, please feel free to seek an additional opinion based on the new information. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the question at issue.

If you have any questions regarding this matter, please contact Patricia Parkin McNamara at (609) 633-6344.

Sincerely,



Barry Skokowski, Sr., Chairman
Local Finance Board

BS:PPM:pw



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS

AMES E. MCGREEVEY
Governor

March 11, 2004

SUSAN BASS LEVIN
Commissioner

Personal & Confidential

Re: Local Government Ethics Law
Advisory Opinion #LFB-04-001
Board Determination

Dear Mayor

The Local Finance Board (Board) has reviewed your request for an advisory opinion regarding the Local Government Ethics Law. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Law.

As the Mayor of the Township of _____ you have requested an advisory opinion as to whether it is a conflict of interest for your spouse's firm, _____, to make applications, on behalf of clients, to the Township of _____. It is understood that _____ is a company that facilitates building permits for clients who are Architects, Developers, Building Management Corporations and/or Building Contractors. As such, _____ coordinates all the necessary paperwork required to secure a building permit; collects all of the UCC Construction permit applications filled out by the client, as well as, the signed and sealed sub code applications for the subcontractors. Furthermore, the firm reviews any architectural plans submitted to ensure completion of information and proper signature and sealing by a licensed Architect.

You have advised that, as Mayor of the Township of _____, you do not have any direct contact or interaction with the permit process. You do not review or issue opinions on any building permit applications or sign any documents or applications relevant to the permit application and approval process. Notwithstanding these assurances, the Board has determined that the Local Government Ethics Law would prohibit your spouse's firm from engaging in the above referenced activity.



The Honorable
March 11, 2004
Page 2

N.J.S.A. 40A:9-22.5(a) states:

No local government officer or employee or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest.

The New Jersey Statutes indicate that, as Mayor of the Township of _____ you are the Chairman of the Township Committee and head of the Municipal Government with the powers to preside at meetings of the Committee and debate and vote on all questions before the Committee. The Committee is the legislative body of the municipality having the power to (1) pass, adopt, amend and repeal any ordinance or, where permitted, any resolution for any purpose required for the government of the municipality or for the accomplishment of any public purpose for which the municipality is authorized to act under general law; (2) control and regulate the finances of the municipality and raise money by borrowing and taxation; (3) create such offices and positions as they deem necessary; (4) investigate any activity of the municipality; and (5) remove any officer of the municipality, other than those officers excepted by law, for cause. The Township Committee, of which you are a member, has all the executive responsibilities of the municipality not placed, by general law or this act, in the office of the Mayor. N.J.S.A. 40A:63-5 and 63-6.

Given the powers of your position in the municipality, the Board has determined that the Local Government Ethics Law would prohibit your spouse's firm from the activity described in your request letter and, generally, from conducting business with the Township of _____ of which you are Mayor because it entails a member of your immediate family having an interest in a business organization or engaging in a business, transaction, or professional activity, which is in substantial conflict with the proper discharge of your duties in the public interest.

The Board's opinion is limited to the specific matter as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the question at issue.

Should you have any questions regarding this matter, please feel free to contact David Nenno at (609) 292-0479.

Sincerely,



Susan Jacobucci, Chair
Local Finance Board



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS

JON S. CORZINE
GOVERNOR

August 20, 2007

CHARLES A. RICHMAN
ACTING COMMISSIONER



Re: Local Government Ethics Law
Advisory Opinion #LFB-07-009
Board Determination

Dear _____

The Local Finance Board (Board) has reviewed your request for an advisory opinion on behalf of Council Member _____. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law (Law).

You have requested an advisory opinion as to whether the _____ may enter into a contract with _____ in which newly elected Council Member _____ has a 50% interest. You added that _____; the lowest bidder and Councilman _____ intends to recuse himself from any discussions or votes involving _____.

N.J.S.A. 40A:9-22.5(a) states:

No local government officer or employee or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest.

Notwithstanding the information provided in your July 12, 2007, request letter, the Board has opined that the above referenced provision of the Law would prohibit Councilman _____ or a business organization in which he has an interest from entering into a contract with the _____ in which he serves as a Governing Body Member. The Law prohibits a company in which a Governing Body Member has an interest from pursuing a contractual relationship with the _____. Adherence to the bidding requirements of the Local Public Contracts Law does not preclude the conflict. Furthermore, the prohibited relationship is not absolved by Councilman _____'s recusal from any discussions or votes involving _____.

August 20, 2007
Page 2

The Board's opinion is limited to the specific matter as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the question at issue.

Should you have any questions regarding this matter, please feel free to contact David Nenno at (609) 292-0479.

Sincerely,



Susan Jacobucci, Chair
Local Finance Board

SJ:DN:la
AO-07-009 response



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 803
TRENTON, NJ 08625-0803

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LOUI GRUA
Commissioner

September 30, 2010

PERSONAL AND CONFIDENTIAL



Re: Local Government Ethics Law
Advisory Opinion #LFB-10-013
Board Determination

Dear [Redacted]

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law (Law). More specifically, N.J.S.A. 40A:9-22.8 provides as follows:

"A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines."

Your request indicates that you represent, [Redacted] a [Redacted] County based business owned by [Redacted] is also a first year [Redacted] County Freeholder. Your request for advice specifically inquires as to whether [Redacted] may submit a sealed bid for work awarded by the [Redacted] County Board of Chosen Freeholders. [Redacted] would like to continue to provide the services required to, among other services, remove deer carcasses from the County roadways.

The applicable provision of the Local Government Ethics Law is N.J.S.A. 40A:9-22.5(a) which provides:

No local government officer or employee or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest.



It is the opinion of the Board that the Local Government Ethics Law would prohibit () from submitting a sealed bid for work to the County Board of Chosen Freeholders, on which he serves as a Freeholder. Specifically, such an action would constitute a violation of the above referenced provision which prohibits a Freeholder from engaging in contractual services with the Freeholder Board on which he serves.

The Board's opinion is limited to the specific matter and question as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the matter and question at issue.

Should you have any questions regarding this matter, please feel free to contact Nick Bennett at (609) 292-0479.

Sincerely,



Thomas H. Neff, Chair
Local Finance Board

TN:NB
AO-10-013response



State of New Jersey
 DEPARTMENT OF COMMUNITY AFFAIRS
 101 SOUTH BROAD STREET
 PO BOX 803
 TRENTON, NJ 08625-0803

CHRIS CHRISTIE
 Governor

KIM GUADAGNO
 Lt. Governor

LORI GRITA
 Commissioner

April 18, 2011

PERSONAL AND CONFIDENTIAL



Re: Local Government Ethics Law
 Advisory Opinion #LFB-11-007
 Board Determination

Dear [redacted]

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law (Law). More specifically, N.J.S.A. 40A:9-22.8 provides as follows:

“A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines.”

Your request indicates that you currently serve as a Police Sergeant with the [redacted] Police Department. Your duties are primarily non-administrative and predominantly patrol oriented. Furthermore, you own and operate a business and are a member of a company called [redacted]. This business provides information technology services such as computer networking, hardware and software maintenance and support. You have asked for an advisory opinion as to whether [redacted] may provide contracted computer services to the [redacted].

The applicable provision of the Local Government Ethics Law is N.J.S.A. 40A:9-22.5(e), which states:

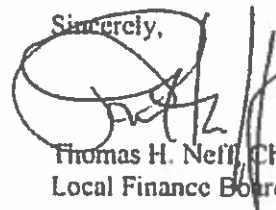
“No local government officer or employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties.”



In light of the circumstances presented in your request for an advisory opinion, it is the opinion of the Board that the Local Government Ethics Law would prohibit you from providing contracted computer services to the [redacted]. In the course of providing such services to the [redacted] you may encounter or be privy to information which is not available to other [redacted] employees and this information might reasonably be expected to prejudice your independence of judgment in the exercise of your official duties. For this reason, the Board has determined the Local Government Ethics Law would prohibit your company from conducting business with the [redacted].

The Board's opinion is limited to the specific matter and question as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the matter and question at issue.

Should you have any questions regarding this matter, please feel free to contact Nick Bennett at (609) 292-0479.

Sincerely,

Thomas H. Neff, Chair
Local Finance Board

TN:nb
AO-11-007



State of New Jersey
 DEPARTMENT OF COMMUNITY AFFAIRS
 101 SOUTH BROAD STREET
 PO Box 803
 TRENTON, NJ 08625-0803

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LOUI GRIFA
Commissioner

October 11, 2011

PERSONAL AND CONFIDENTIAL



Re: Local Government Ethics Law
 Advisory Opinion #LFB-11-008
 Board Determination

Dear [Redacted]

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law (Law). More specifically, N.J.S.A. 40A:9-22.8 provides as follows:

"A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines."

Your request indicates that you serve as one of three Committeemen on the governing body of [Redacted]. You also have provided free animal shelter to the [Redacted] as an extension of your veterinary practice. You note that you have been advised by the [Redacted] Attorney that you can no longer provide this service now that you have been elected to the [Redacted] Committee. You have requested an opinion whether you may continue to provide animal shelter services to the residents of [Redacted] or the [Redacted] Animal Control Office provided you do not charge a fee for such services. Instead, you will charge fees to surrounding municipalities for the animal shelter services you provide to them to cover the expenses incurred as a result of caring for the animals of [Redacted].

The applicable provisions of the Local Government Ethics Laws are as follows:



N.J.S.A. 40A:9-22.5(a)

No local government officer or employee or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest.

And,

N.J.S.A. 40A:9-22.5(e)

No local government officer or employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties.

Upon consideration of the information set forth in your letter of April 12, 2011 in light of the aforementioned provisions of the Local Government Ethics Law, it is the opinion of the Local Finance Board that you, or a firm or company such as your [redacted] practice, would be prohibited from conducting business with any municipality in which you serve as Committeeman. It is the opinion of the Local Finance Board that, regardless of the method utilized by a municipality for the purpose of procuring goods or services, e.g., competitive bidding, competitive contracting, formal requests for proposals, the solicitation of formal or informal price quotations, etc., under the Local Public Contracts Law, the establishment of a contractual arrangement between that municipality and a private entity in which an official of that municipality (such as a mayor, a member of the municipal governing body or a municipal attorney) has an interest would be inconsistent with and contrary to the provisions of the Local Government Ethics Law.

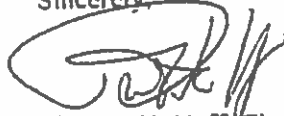
Under such circumstances, opportunities exist under which the local government officer may secure an unwarranted privilege or advantage for himself or others, e.g., by directing or affecting the method by which the procurement process is undertaken. Such procurement processes may not occur in full public view under the Open Public Meetings Act. Further, even where a municipality is required or elects to follow public competitive bidding requirements, such a process would not remove the potential for psychological influences that the local government officer may exercise in relation to the members of the municipal governing body, i.e., a mayor, municipal attorney or a member of the governing body may, merely by virtue of his position, wield influence regarding the manner in which others vote on the award of a contract to that municipal official. An award, even through the open competitive process, would not, in the opinion of the Local Finance Board, remove the perception that members of the public may realistically have regarding the influence that the local government officer may have over the members of the governing body or the appearance of impropriety on the part of the local government officer who submits a bid to the municipality. Therefore, it is the Board's opinion that the Local Government Ethics Law would prohibit you from providing [redacted] services for the [redacted].

The Local Government Ethics Law does not restrict you from providing these services to individual residents of, [redacted]. Furthermore, the Local Government Ethics Law does not apply to agreements you may enter into with governmental entities you do not serve.

The Board's opinion is limited to the specific matter and question as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the matter and question at issue.

Should you have any questions regarding this matter, please feel free to contact Nick Bennett at (609) 292-0479.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Neff', written over a large, stylized circular flourish.

Thomas H. Neff, Chair
Local Finance Board

TIN:ub
AD-11-008 Response



State of New Jersey
 DEPARTMENT OF COMMUNITY AFFAIRS
 101 SOUTH BROAD STREET
 PO BOX 803
 TRENTON, NJ 08625-0803

CHRIS CHRISTIE
 Governor

KIM GUADAGNO
 Lt. Governor

RICHARD E. CONSTABLE, III
 Acting Commissioner

May 16, 2012

PERSONAL AND CONFIDENTIAL



Re: Local Government Ethics Law
 Advisory Opinion #LFB-12-001
 Board Determination

Dear [Redacted]

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law (Law). More specifically, N.J.S.A. 40A:9-22.8 provides as follows:

"A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines."

Your request indicates that you are a member of the Council in the [Redacted]. You also operate a [Redacted] operation that has serviced the [Redacted] since 1991. You indicate that you are not paid by the [Redacted] for these services. All fees are paid by the owner of [Redacted] vehicle, or the appropriate insurance company. You indicated that the [Redacted] Police Chief is tasked with approving the applications submitted by entities seeking to perform [Redacted] operations for the [Redacted]. You have requested an advisory opinion regarding whether you may continue to perform [Redacted] duties for the [Redacted] while simultaneously serving on the Council.

The applicable provisions of the Local Government Ethics Law are N.J.S.A. 40A:9-22.5(d) and N.J.S.A. 40A:9-22.5(e) which provide:

N.J.S.A. 40A:9-22.5(d) No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or

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indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

And,

N.J.S.A. 40A:9-22.5(c) No local government officer or employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his duties.

It is organized in the _____ form of government pursuant to N.J.S.A. 40A:60-1 et seq. In the Borough form of government, the council is explicitly given certain powers, including the ability to create offices and positions it deems necessary and to appoint individuals to those positions, including the leadership positions within the Borough's Police Department. The council also has the power to remove any officer of the municipality.

You have advised the Board that in _____ the _____ council has established a procedure to certify _____ for the _____. Any application submitted to the _____ is evaluated by the Police Department according to objective criteria. Successful applicants are added to a rotation that includes all approved _____. When the _____ is in need of _____ services, the _____ operator at the top of the rotation receives the first call. If that _____ company is unable to respond, the _____ contacts the next listed _____ operator until someone is able to complete the job.

In light of the circumstances represented in your current request for an advisory opinion, it is the opinion of the Board that the Local Government Ethics Law would prohibit you from performing _____ operations for the _____ while simultaneously serving as a member of the _____ council. A disqualifying direct or indirect financial or personal involvement would exist if you were to continue performing _____ services for the _____. As a councilmember, you have oversight over the office of Police Chief as well as members of the police department. This arrangement could create the appearance of impropriety during the approval process for _____ as well as oversight of the _____ rotation process.

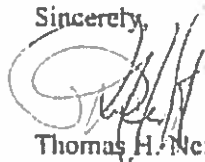
Further, as a member of the governing body, you would be in a position to oversee the disposal of public property should such an occasion occur as a result of abandoned _____ vehicles which become municipal property. A member of the governing body would not be able to provide services to the _____ because it is established that he would derive at least a portion of his income from those services. This arrangement might reasonably be expected to impair his objectivity or independence of judgment. A member of the governing body would be disqualified from exercising the authority of his office in any matter in which he has a financial interest that conflicts with his public duty.

For these reasons, the Board has determined that the Local Government Ethics Law prohibits you from continuing to serve as one of the contracted _____ or the _____ while you simultaneously serve in the position of councilmember.

The Board's opinion is limited to the specific matter and question as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the matter and question at issue.

Should you have any questions regarding this matter, please feel free to contact Nick Bennett at (609) 292-0479.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Neff', written over a circular stamp or seal.

Thomas H. Neff, Chair
Local Finance Board

TIN nb
AO-12 001 Response



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 803
TRENTON, NJ 08625-0803

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

September 10, 2012

PERSONAL AND CONFIDENTIAL



Re: Local Government Ethics Law
Advisory Opinion #LFB-12-013
Board Determination

Dear [redacted]

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law (Law). More specifically, N.J.S.A. 40A:9-22.8 provides as follows:

“A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines.”

Your request indicates that you currently serve as a member of the [redacted] Zoning Board of Adjustment. You are also the sole owner of a professional service company that supplies land surveying services throughout New Jersey. Your spouse serves as an elected official in the [redacted]. You have requested an opinion as to whether your role on the Zoning Board of Adjustment would prohibit you from providing professional services to the [redacted] when those services are not related to your duties on the Zoning Board of Adjustment.

You further requested that the Board disregard your spouse's elected position in the [redacted]. Please be advised that the Board offers opinions based upon the specific relevant facts at the time of the request. Your wife's position is a relevant fact and therefore cannot be disregarded.



The applicable provisions of the Local Government Ethics Law are N.J.S.A. 40A:9-22.5(a), N.J.S.A. 40A:9-22.5(d), N.J.S.A. 40A:9-22.5(e), N.J.S.A. 40A:9-22.5(g) and N.J.S.A. 40A:9-22.5(h) which state:

N.J.S.A. 40A:9-22.5(a) No local government officer or employee or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest; and,

N.J.S.A. 40A:9-22.5(d) No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment; and,

N.J.S.A. 40A:9-22.5(e) No local government officer or employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties; and,

N.J.S.A. 40A:9-22.5(g) No local government officer or employee shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization in which he associated; and,

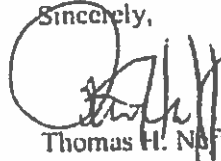
N.J.S.A. 40A:9-22.5(h) No local government officer or employee or business organization in which he has an interest shall represent any person or party other than the local government in connection with any cause, proceeding, application or other matter pending before any agency in the local government in which he serves. This provision shall not be deemed to prohibit one local government employee from representing another local government employee where the local government agency is the employer and the representation is within the context of official labor union or similar representational responsibilities;

In light of the circumstances presented in your request for an advisory opinion, it is the opinion of the Board that the Local Government Ethics Law would prohibit you from providing professional services to the [redacted] Specifically, given your position on the Zoning Board of Adjustment and [redacted] or your wife's position in the [redacted] you may encounter or be privy to nonpublic information which might reasonably be expected to prejudice your objectivity or independence of judgment should you secure a contract with the [redacted] to provide land surveying services. For this reason, the Board has determined that the Local Government Ethics Law would prohibit your or your company from conducting business with the [redacted]

The Board's opinion is limited to the specific matter and question as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the matter and question at issue.

Should you have any questions regarding this matter, please feel free to contact Nick Bennett at (609) 292-0479.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas H. Neff", written over a circular stamp or seal.

Thomas H. Neff, Chair
Local Finance Board

TN:nb
AO-12-013.Response

FAMILIAL RELATIONSHIPS

	File Number	Question Presented	Board's Opinion	40A:9-22.5 Reference
1	92-014	Whether the spouse of an elected official may engage in business transactions with the municipality.	Prohibited by the Local Government Ethics Law	(c), (d)
2	92-019	Whether the husband or son of the Township clerk may bid on Township jobs, be awarded Township contracts as the lowest bidder, or perform as a subcontractor to a Township job.	Faulkner Act may apply	None. N.J.S.A. 40:69A-163
3	06-024	Whether a member of the governing body may participate in her official capacity on the Public Works Administration Committee when her husband is employed as a laborer in the department of public works.	Prohibited by the Local Government Ethics Law.	(d), (e)
4	07-007	Whether a member of the governing body may vote in favor of the re-appointment of the municipal manager when the municipal manager is the elected official's first cousin.	Prohibited by the Local Government Ethics Law.	(d)
5	09-003	Whether a governing body member, whose emancipated son is a member of the municipal police department, may participate in matters related to the police department as a whole, such as collective bargaining.	Prohibited by the Local Government Ethics Law.	(d)
6	09-011	Whether a governing body member may participate in the municipal budget process when the governing body member's spouse is a volunteer member and captain of the first aid squad.	Prohibited by the Local Government Ethics Law from participating in matters directly related to emergency medical services.	(d)

7	09-016	Whether a member of the governing body, whose son is a police officer, may attend closed session meetings to discuss promotions in the police department if the governing body member does not speak during the closed sessions.	Prohibited by the Local Government Ethics Law.	(c), (d)
8	10-008	Whether a member of the governing body may vote to ratify a contract between the municipality and the police department when he does not participate in the collective bargaining process and the governing body member's son is an officer in the police department.	Prohibited by the Local Government Ethics Law.	(d)
9	10-016	Whether a member of the governing body may participate in matters related to the consideration of a failed local school budget if the governing body member's wife is an elected member of the school board.	Not prohibited by the Local Government Ethics Law.	(d)
10	11-018	Whether a member of the governing body may access information regarding the municipal department of public works when her husband is an employee of the department of public works.	Prohibited by the Local Government Ethics Law from accessing information not otherwise available to the general public.	(c), (d), (g)
11	13-008	Whether a member of the governing body may participate in matters related to an ordinance regarding the day-to-day operations of the police department when the governing body member's adult son is a municipal police officer.	Prohibited by the Local Government Ethics Law.	(d)
12	14-008	Whether the children of sitting members of a governing body may serve as unpaid interns at a municipally-run summer camp, and whether those same children may later become paid employees of the municipality.	Prohibited by the Local Government Ethics Law in both circumstances.	(c), (d)

13	16-006	Whether the involvement of a governing body member's spouse as a member of the public at meetings of the zoning board of adjustment prohibits the governing body member from participating in any zoning board appeal regarding those cases.	Not prohibited by the Local Government Ethics Law.	(d)
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State of New Jersey

JIM FLORIO
GOVERNOR

DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION OF LOCAL GOVERNMENT SERVICES
LOCAL FINANCE BOARD

MELVIN R. PRIMAS
COMMISSIONER

Bella SAGNOWSKI, Sr. Chairman

101 SOUTH BROAD STREET
CN 803
TRENTON N.J. 08625-0803

BOARD MEMBERS:

- James P. Berry
- Robert H. Graamere
- Stanley Iacono
- Joseph Iannacori, Jr.
- Robert C. Miller
- Harold F. Mullin
- Susan L. Nickolopoulos

August 10, 1992

Re: Local Government Ethics Law
Advisory Opinion LFB #92-014

Dear

The Local Finance Board (Board) has received your request seeking an advisory opinion regarding the Local Government Ethics Law. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the law.

You have inquired as to whether the spouse of a local government officer who is an elected official, may do business with the municipality under one of two conditions:

1. The local government officer does not vote or take part in ordering; and,
2. Formal bids or informal quotes as appropriate are obtained with the local government officer abstaining from any action concerning vouchers involving that business.

Under N.J.S.A. 40A:9-22.5 (d) it states:

No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgement.



Your letter indicates that a local government officer's spouse owns a local retail establishment which sells trophies and plaques. The Township is contemplating purchasing trophies and plaques from the local government officer's spouse's business. In your letter you estimated that total annual sales would range from \$1,000-\$2,000. Based upon the sales estimates given, the purchases would not be subject to public bidding requirements.

A member of the governing body, whose spouse owns and operates a local retail establishment, constitutes such a relationship which bears a direct financial interest on the part of the local government officer. At least part of his economic well-being would be derived through his spouse succeeding in being awarded business with the township. A local government officer could reasonably be expected to impair his objectivity or independence of judgement if he acts in his official capacity on matters that would affect his spouse's business. Having such a situation, that member of the governing body would not be able to take part in any matter pertaining to the purchase of goods from his spouse's retail store. For instance, a local government officer could not take part in voting on any matters pertaining to purchases or award of that bid. He would not be able to sign a purchase order nor would he be able to act in his official capacity on budget matters affecting such retail goods.

A second issue relevant to the question is a matter of how the business would be secured. Under N.J.S.A. 40A:9-22.5 (c) it states:

No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others.

The total annual estimated purchase of goods from the retail business would range from \$1,000-\$2,000. Based upon this estimate, the Local Public Contracts Law, N.J.S.A. 40A:11-6.1, would require an informal quotation process if the goods costs more than \$1,000 and are less than the formal bid threshold of \$10,300. It is at this juncture that a local government officer would have the greatest opportunity to secure an unwarranted privilege or advantage for himself or others. The fundamental question is the method the township plans to utilize to secure informal price quotes. The Local Public Contracts Law provides broad latitude as to the method. The law requires the solicitation of quotations, "where practicable." It does not specify the manner in which quotes are obtained, but leaves it to the discretion of the municipality. Quotes may be obtained via telephone requests, written, or whatever other method is decided upon. This process may be manipulated very easily so that the "paper trail" appears as if the lowest quote was received from the local government officer's spouse. A local government officer would have an "inside track" on directing the method by which informal quotes would be secured. Such an informal process may not occur in full public view under the Sunshine Law, since it may not require a formal award by the governing body.

August 10, 1992
Page 3

A municipality, given the circumstance that the spouse of a local government officer intends to submit a quote, may choose to follow more stringent public bidding requirements, namely the open competitive process, even though they are not statutorily required to do so. Such an open competitive process would help to safeguard against a local government officer securing an unwarranted privilege or advantage for himself or others, while acting in his official capacity, but would not remove the potential for psychological influences the local government officer may wield on his member colleagues on the governing body. A member of the governing body may wield influence on the vote of others in the award of a contract to the spouse of a local government officer. An award, even through the open competitive process, does not remove the aura of influence the local government officer may hold over the other members of the governing body or the appearance of impropriety on the part of the local government officer whose spouse submits a bid to the municipality.

In conclusion, the Board has determined that such a proposed activity, that of the spouse of an elected official conducting business with the same municipality, is an activity that should be avoided. Elected officials are held to the highest standards of ethical conduct. Any appearance of impropriety or tacit influence on others by an elected official impugns the standards set forth in the Local Government Ethics Law.

This determination is based solely upon the facts detailed in your correspondence. You are cautioned not to apply this opinion to similar situations. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the question at issue.

If you have any questions regarding this matter, please feel free to contact Patricia Parkin McNamara at (609) 633-6344.

Sincerely,



Barry Skokowski, Sr., Chairman
Local Finance Board

ES:PPM:jak

JULI FLORIO
GOVERNOR

LOCATION

WILLIAM ASHBY
COMMUNITY AFFAIRS BUILDING
101 SOUTH BROAD STREET
TRENTON NEW JERSEY

DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION OF LOCAL GOVERNMENT SERVICES
LOCAL FINANCE BOARD

STEPHANIE R. ...
COMMISSIONER

HARRY SKOKOWSKI
CHAIRMAN

BOARD MEMBER

JAMES P. BARRI
ROBERT H. GRASB
STANLEY IACON
JOSEPH IANNACON
ROBERT C. MILLI
SUSAN NICKOLOPO
LAURENCE S. WE
MAILING ADDRESS

CN 803
TRENTON, NJ 08621

February 4, 1993

Re: Local Government Ethics Law
Advisory Opinion 92-019
Board Determination

Dear :

The Local Finance Board (Board) has reviewed your request for an advisory opinion regarding the Local Government Ethics Law. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the law.

You have inquired as to whether your husband or sons may bid on Township jobs, be awarded Township contracts as the lowest bidder, or perform as a subcontractor to a Township job. It is understood that your husband is President of his own construction company and your sons are both in the construction business for themselves.

All bids and contracts are filed with the Clerk's Office. As the Clerk, you merely receive the sealed bids that are submitted in response to advertisements for public bids and are not, in any way, a part of or have any influence upon the bid process. You have stated that you neither draw specifications nor have authority to issue or vote upon the award of any contract.

The Local Government Ethics Law would generally prohibit activity such as:

- (1) Having an interest in a business organization, transaction, or professional activity that would be in substantial conflict with the proper discharge of your duties in the public interest;
- (2) Using your position to secure an unwarranted privilege for yourself or someone else;



- (3) Acting in your official capacity in this matter;
- (4) Using your public office or employment, or any information, not generally available to the members of the public, for the purpose of securing financial gain for yourself, member of your immediate family, or business organization with which you are associated, or
- (5) Representing your husband or sons before the Township.

If you are in the position to influence the procurement of the product(s) or service(s) being supplied; if you must submit the requisition for the product(s) or service(s); or, if you are required to sign a purchase order certifying the satisfactory procurement of said product(s) or service(s), you might have a conflict and the proposed activity might be a violation.

It appears that you would not have any involvement in actually awarding bids, nor would you violate any of the five conditions mentioned above. Therefore, there is nothing to indicate that this proposed activity would be a violation of the Ethics Law under these circumstances.

It must be noted, however, that _____ operates under the Optional Municipal Charter Law and, as such, is subject to N.J.S.A. 40:69A-163:

No officer or employee elected or appointed in any municipality shall be interested directly or indirectly in any contract or job for work or materials, or the profits thereof, to be furnished or performed for the municipality, . . .

Consequently, the proposed activity may be in conflict with the Optional Municipal Charter Law (Faulkner Act), specifically N.J.S.A. 40:69A-163.

The Board has no jurisdiction to comment on, or give advice concerning, the Optional Municipal Charter Law (Faulkner Act). Please be advised that you should consult your Township Attorney for an opinion on the Faulkner Act restrictions.

This opinion is limited to the specific request at issue. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the question at issue.

If you have any questions regarding this matter, please feel free to contact Patricia Parkin McNamara at (609) 633-6344.

Sincerely,





State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS

ION S. CORZINE
Governor

SUSAN BASS LEVIN
Commissioner

December 19, 2006



Re: Local Government Ethics Law
Advisory Opinion #LFB-06-024
Board Determination

Dear [REDACTED]

The Local Finance Board (Board) has reviewed your request for an advisory opinion regarding the Local Government Ethics Law. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Law.

As a Member of the [REDACTED] Governing Body, you requested an advisory opinion as to whether you may choose to "assist" with the Public Works Administration Committee when your husband is employed as a laborer in the Department of Public Works.

The Local Government Ethics Law states:

N.J.S.A. 40A: 9-22.5.d. No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment; and

N.J.S.A. 40A: 9-22.5.e. No local government officer or employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;



December 19, 2006

Page 2

The Board issues its opinion that the Local Government Ethics Law would prohibit you from accepting a position assisting the Public Works Committee because your husband is employed as a laborer in the Department of Public Works. Undertaking such a service might reasonably be expected to prejudice your independence of judgment in the exercise of your official duties. The nature of the position you are considering is one that requires official actions on matters in which you have a direct or indirect financial or personal involvement that might reasonably be expected to impair your objectivity or independence of judgment.

The Board's opinion is limited to the specific matter as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the question at issue.

Should you have any questions regarding this matter, please feel free to contact David Nenno at (609) 292-0479.

Sincerely,



Susan Jacobucci, Chair
Local Finance Board

SJ:DN:ja
AO-06-024 Response



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS

JON S. CORZINE
Governor

SUSAN BASS LEVIN
Commissioner

June 18, 2007

PERSONAL & CONFIDENTIAL



Re: Local Government Ethics Law
Advisory Opinion #LFB-07-007
Board Determination

Dear [REDACTED]

The Local Finance Board (Board) has reviewed your request for an advisory opinion regarding the Local Government Ethics Law. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Law.

You requested an advisory opinion as to whether, subsequent to your taking office on July 1, 2007, you should cast a vote for the appointment and/or re-appointment of the current Municipal Manager who is, in fact, your first cousin.

The Local Government Ethics Law states:

N.J.S.A. 40A: 9-22.5.d. No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

The Board issues its opinion that the appointment and/or re-appointment of your first cousin to the position of Municipal Manager is a matter in which you have an indirect personal involvement that might reasonably be expected to impair your objectivity or independence of judgment. Therefore, it is advisable that you abstain from voting on the appointment and/or re-appointment.



June 18, 2007
Page 2

The Board's opinion is limited to the specific matter as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the question at issue.

Should you have any questions regarding this matter, please feel free to contact David Nenu at (609) 292-0479.

Sincerely,



Susan Jacobucci, Chair
Local Finance Board

SJ:DN:la
AO-07-007 Response



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS

JON S. CORZINE
Governor

JOSEPH V. DORIA, JR
Commissioner

March 25, 2009

PERSONAL & CONFIDENTIAL

[Redacted]

Re: Local Government Ethics Law
Advisory Opinion #LFB-09-003
Board Determination

Dear [Redacted]

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law (Law). More specifically, N.J.S.A. 40A:9-22.8 provides as follows:

"A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines."

Your request for advice indicates that you are currently serving as a Councilman for the [Redacted] Police Department. Your married and emancipated son is a member of the [Redacted] Police Department. Your request for advice specifically inquires as to whether you would be prohibited from voting on matters that affect the Police Department as a whole such as collective bargaining.

The applicable provision of the Local Government Ethics Law is N.J.S.A. 40A:9-22.5(d) which provides:

No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.



March 25, 2009

Page 2

In Advisory Opinion #LFB-08-008 (copy enclosed) the Board advised you that the Local Government Ethics Law would prohibit you from participating in any matter in which your son has a direct or indirect financial or personal involvement that might reasonably be expected to impair your objectivity or independence of judgment.

In light of the circumstances represented in your current request for an advisory opinion, it is the opinion of the Board that a direct personal interest exists where an official is expected to act in a matter that impacts a blood relative. Thus, you have a disqualifying personal interest in voting on matters that affect your son. Therefore, you would be prohibited from participating in or voting on matters that entail collective bargaining with the Police Department because it is reasonable to expect that your objectivity or independence of judgment would be impaired.

The Board's opinion is limited to the specific matter and question as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the matter and question at issue.

Should you have any questions regarding this matter, please feel free to contact David Nenno at (609) 292-0479.

Sincerely,



Susan Jacobucci, Chair
Local Finance Board

Enclosure
SJ:DN:la
AO-09-003 response



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS

JON S. CORZINE
Governor

June 4, 2009

JOSEPH V. DONIA, JR.
Commissioner

PERSONAL & CONFIDENTIAL

[Redacted]

Re: Local Government Ethics Law
Advisory Opinion #LFB-09-011
Board Determination

Dear [Redacted]

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law. More specifically, N.J.S.A. 40A:9-22.8 provides as follows:

"A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines."

Your request for advice indicates that you are currently serving as an elected Member of Council in the [Redacted]. You have requested an advisory opinion as to whether you are prohibited from participating in discussions or acting upon matters pertaining to the provision of emergency medical services in the [Redacted] in light of the fact that your husband is a volunteer member and captain of the [Redacted] first Aid Squad. Specifically, you have inquired whether you would be prohibited from participation in discussions of the [Redacted] budget in general or of emergency medical services matters in particular.



June 4, 2009

Page 2

The applicable provision of the Local Government Ethics Law is N.J.S.A. 40A:9-22.5(d) which provides as follows:

No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

In light of the circumstances represented in your request, it is the opinion of the Local Finance Board that any matter that pertains specifically to emergency medical services or the First Aid Squad would be a matter in which you and/or your husband would have a direct or indirect financial or personal involvement that might reasonably be expected to impair your objectivity or independence of judgment. Consequently, you would be prohibited from participating in and voting on matters specifically pertaining to the provision of emergency medical services in the budget. However, you would not be prohibited from participating in and voting on the budget so long as you did not participate in any discussion or action pertaining to any specific appropriation in the budget relating to emergency medical services.

The Board's opinion is limited to the specific matters and questions as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the matter and question at issue.

Should you have any questions regarding this matter, please feel free to contact David Nenno at (609) 292-0479.

Sincerely,



Susan Jacobucci, Chair
Local Finance Board



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS

IONY CORZINE
GOVERNOR

CHARLES A. RICHMAN
ACTING COMMISSIONER

August 19, 2009

Personal & Confidential



Re: Local Government Ethics Law
Advisory Opinion LFB #09-016

Dear [redacted]

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law. More specifically, N.J.S.A. 40A:9-22.8 provides as follows:

"A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines."

Your request for advice indicates that you are a newly elected Committeeman in the [redacted] whose son is a detective in the police department in the same [redacted]. You are seeking an opinion as to whether you may attend a closed session meeting of the [redacted] Committee where matters regarding police department promotions will be addressed and discussed. You stated your understanding that you will not be able to participate or make comments in the closed session that pertain to your son.

The applicable provisions of the Local Government Ethics Law are N.J.S.A. 40A:9-22.5(c) and (d) which provide as follows:



August 19, 2009

Page 2

N.J.S.A. 40A: 9-22.5.c. No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others; and

N.J.S.A. 40A: 9-22.5.d. No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

In light of the circumstances represented in your request, and upon review and consideration of the applicable provisions of the Local Government Ethics Law, it is the opinion of the Local Finance Board that the Local Government Ethics Law would prohibit you from attending closed session meetings of the [redacted] Committee where matters regarding police department promotions will be addressed and discussed.

It is the Board's opinion that, when a local government officer has a prohibiting involvement in a matter, he must recuse himself and leave the room. It is reasonable to expect that your presence at such a meeting would entail the exertion of undue influence on the remainder of the board. This is especially true for a closed session meeting convened for the purpose of discussing the matter at issue because closed sessions are outside of the public's view. The Board agreed that any matters involving your son are matters in which you have a prohibiting involvement.

The advisory opinion set forth in this letter is limited to the specific factual circumstances and questions set forth in your request for advice. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the specific facts and questions presented. Further, this advisory opinion pertains only to situations that may arise in the future and not to any circumstances that may have already occurred.

Should you have any questions regarding this matter, please feel free to contact David Nanno at (609) 292-0479

Sincerely,



Susan Jacobucci, Chair
Local Finance Board

SJ DN:la

AO 09-016 response



State of New Jersey
 DEPARTMENT OF COMMUNITY AFFAIRS
 101 SOUTH BROAD STREET
 PO Box 803
 TRENTON, NJ 08625-0803

CHRIS CHRISTIE
 Governor

KIM GUADAGNO
 Lt. Governor

LORI GILTA
 Commissioner

September 29, 2010

PERSONAL & CONFIDENTIAL



Re: Local Government Ethics Law
 Advisory Opinion #LFB-10-008
 Board Determination

Dear [redacted]

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law (Law). More specifically, N.J.S.A. 40A:9-22.8 provides as follows:

"A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines."

Your request for advice indicates that you are currently serving as a Committeeman in the [redacted] County. Your son is a twelve year veteran of the [redacted] Police Department. Your request for advice specifically inquires as to whether you would be prohibited from voting on contracts between the [redacted] and Police Department if you are not a part of the collective bargaining process.

The applicable provision of the Local Government Ethics Law is N.J.S.A. 40A:9-22.5(d) which provides:

No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.




In light of the circumstances represented in your current request for an advisory opinion, it is the opinion of the Board that, notwithstanding your exclusion from the collective bargaining process, the Local Government Ethics Law would prohibit you from voting on contracts between the _____ and the Police Department because it constitutes a direct personal interest. A direct personal interest exists where an official is expected to act in a matter that impacts a blood relative. Thus, you have a disqualifying personal interest in voting on matters that affect your son. Therefore, you would be prohibited from participating in or voting on matters that entail collective bargaining with the Police Department because it is reasonable to expect that your objectivity or independence of judgment would be impaired.

The Board's opinion is limited to the specific matter and question as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the matter and question at issue.

Should you have any questions regarding this matter, please feel free to contact Nick Bennett at (609) 292-0479.

Sincerely,



Thomas H. Neff, Chair
Local Finance Board

TN:NB
AO-10-008response



State of New Jersey
 DEPARTMENT OF COMMUNITY AFFAIRS
 101 SOUTH BRIDGE STREET
 PO BOX 803
 TRENTON, NJ 08625-0803

CHRIS CHRISTIE
 Governor

KEVIN GUADAGNO
 Lt. Governor

LOUI GIROTA
 Commissioner

January 31, 2011

[Redacted]

Re: Local Government Ethics Law
 Advisory Opinion #LFB-10-016
 Board Determination

Dear [Redacted]

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law (Law). More specifically, N.J.S.A. 40A:9-22.8 provides as follows:

"A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines."

You have requested an advisory opinion as to whether you, as an elected Councilman, may participate and vote on any matters involving a failed local school budget when your wife is an elected member of the [Redacted] School Board. You indicate that neither you nor your wife has a financial interest in the school or the [Redacted]. You have also indicated that you have recused yourself from voting on these matters in the past when the Council had to vote on the school budget and that the [Redacted] attorney advised it would be a conflict. The [Redacted] attorney's advice was not provided to the Board.

The Local Government Ethics Law, N.J.S.A. 40A:9-22.5(d), states:

"No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment."

It is the opinion of the Board that the Local Government Ethics Law would not prohibit you from participating and voting on any matters involving a failed Local School Budget. Members of the _____ Council and the _____ School Board are elected by the voters of _____ . Ultimately, the Board has reasoned, it is the will of voters that must hold sway. Therefore, it has been determined that you may participate and vote on any matters involving a failed local school budget.

The Board's opinion is limited to the specific matter and question as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the matter and question at issue.

Should you have any questions regarding this matter, please feel free to contact Nick Bennett at (609) 292-0479.

Sincerely,



Thomas H. Neff, Chair
Local Finance Board

THIN:NB
AO-10-016response



State of New Jersey
 DEPARTMENT OF COMMUNITY AFFAIRS
 101 SOUTH BROAD STREET
 PO BOX 803
 TRENTON, NJ 08625-0803

CHRIS CHRISTIE
Governor
 KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Acting Commissioner

January 30, 2011

PERSONAL & CONFIDENTIAL

[Redacted]

Re: Local Government Ethics Law
 Advisory Opinion #LFB-11-018

Dear [Redacted]

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law (Law). More specifically, N.J.S.A. 40A:9-22.8 provides as follows:

"A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines."

Your request for advice indicates that you are currently serving as an elected Committeewoman in the [Redacted]. Your husband is employed by the [Redacted] as a laborer in the Department of Public Works. You have requested an opinion as to what information might you be able to request regarding the Department of Public Works in your official capacity of Committeewoman.

The applicable provisions of the Local Government Ethics Law are N.J.S.A. 40A:9-22.5(c), N.J.S.A. 40A:9-22.5(d) and N.J.S.A. 40A:9-22.5(g).

N.J.S.A. 40A:9-22.5(c) provides:

No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others.

N.J.S.A. 40A:9-22.5(d) provides:

No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or



personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.


N.J.S.A. 40A:9-22.5(g) provides:

No local government officer or employee shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated.

The nature of your request to the Board is broad, and therefore the Board's response is similarly broad. As a Committee member, you are entitled to any information that is also available to the general public, obtained through the same process that a member of the general public would obtain the information. You may participate in dialogue about the general budget of the Department and of the [redacted] You may ask any questions you feel are appropriate in an open public meeting. However, you may not be involved in matters regarding the day to day operations of the Department of Public Works. In all contemplated activity, the [redacted] Attorney may make the final determination regarding whether your participation is prohibited.

The Board's opinion is limited to the specific matter and question as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an Advisory Opinion may only be applied to the matter and question at issue. If you should have more specific questions regarding the limitations on your ability to act, you may request an additional Advisory Opinion to address those concerns.

Should you have any questions regarding this matter, please feel free to contact Nick Bennett at (609) 292-0479.

Sincerely,

Thomas H. Neff, Chair
Local Finance Board

TIN nb
AO-11-018 response



State of New Jersey
 DEPARTMENT OF COMMUNITY AFFAIRS
 101 SOUTH BROAD STREET
 PO BOX 803
 TRENTON, NJ 08625-0803

CHRIS CHRISTIE
 Governor

KIM GUADAGNO
 Lt. Governor

RICHARD E. CONSEABLE, III
 Commissioner

October 18, 2013

PERSONAL & CONFIDENTIAL



Re: Local Government Ethics Law
 Advisory Opinion #LFB-13-008

Dear _____

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law (Law). More specifically, N.J.S.A. 40A:9-22.8 provides as follows:

A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines.

Your request for advice indicates that you are currently serving as the Deputy Mayor in the _____ in _____ County. Your son is second highest ranking officer of the _____ Police Department. You have requested an opinion as to whether the Local Government Ethics Law would prohibit you from participating in matters related to the day to day operations of the _____ Police Department. Specifically, the governing body is currently debating whether the Public Safety Director or the highest ranking officer of the _____ Police Department should assume the day to day operation responsibilities of the Department in the absence of a police chief.

The applicable provision of the Local Government Ethics Law is N.J.S.A. 40A:9-22.5(d) which provides:

No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or



personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

A review of the records maintained by the Local Finance Board indicates that in 2010 the Board issued Advisory Opinion 10-008 to you in response to your question whether the Local Government Ethics Law would prohibit you from voting on contracts between the _____ and the Police Department if you are not part of the collective bargaining process. The Board opined that the Local Government Ethics Law would prohibit you from voting on that contract because a direct personal interest existed where you would be expected to act in your official capacity. A copy of Advisory Opinion 10-008 is enclosed with this response.

The Board has drawn the same conclusion when analyzing the present question. It is the opinion of the Local Finance Board that your son's employment as a police officer in the _____ presents a disqualifying interest that prohibits you from participating in your official capacity in matters involving the day to day operations of the Police Department. Your son's position with the Department represents a personal involvement that might reasonably be expected to impair your objectivity or independence of judgment. Participation in matters related to day to day Police Operations is prohibited by the Local Government Ethics Law because a local government officer or employee may not act in his official capacity where there is a direct or indirect personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

The Board's opinion is limited to the specific matter and question as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the matter and question at issue.

Should you have any questions regarding this matter, please feel free to contact Nick Bennett at (609) 292-0479.

Sincerely,



Thomas H. Nuff, Chair
Local Finance Board

Enclosure
HHN nb
AO 13-008 response



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 803
TRENTON, NJ 08625-0803

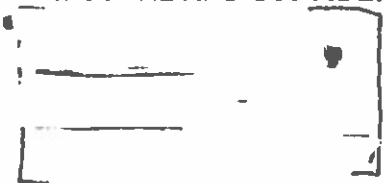
CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

June 20, 2014

PERSONAL AND CONFIDENTIAL



Re: Local Government Ethics Law
Advisory Opinion #LFB-14-008

Dear [redacted]

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law (Law). More specifically, N.J.S.A. 40A:9-22.8 provides as follows:

A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines.

Your request indicates that you are requesting this opinion on behalf of the mayor and several members of the governing body of a municipality you represent. The municipality operates a summer program where an individual serves as an unpaid intern at a recreation camp. After two years in this position, the individual may apply to the municipality to become a paid summer employee at the camp. The individual would be an employee of the municipality.

You have requested an opinion as to whether the Local Government Ethics Law would prohibit offspring of sitting members of the governing body from serving as unpaid interns at the municipal summer camp and later becoming paid employees of the municipality.

The applicable provisions of the Local Government Ethics Law are N.J.S.A. 40A:9-22.5(c) and N.J.S.A. 40A:9-22.5(d), which provide:

(c) No local government officer or employee shall use or attempt to use his

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official position to secure unwarranted privileges or advantages for himself or others; and,

(d) No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

In light of the circumstances represented in your request for an advisory opinion, it is the opinion of the Board that the Local Government Ethics Law would prohibit the offspring of any member of the governing body from becoming paid employees of the municipality.

The parent-child relationship between members of the governing body and their offspring who may apply to serve as paid employees represents a direct personal involvement that might reasonably be expected to impair the objectivity or independence of judgment of the governing body members.

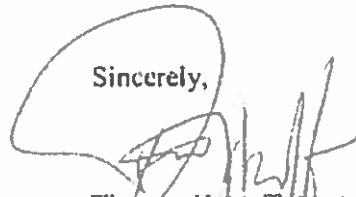
Though the governing body members may not personally select the summer employees from the group of applicants to the position, the governing body has the ultimate ability to provide resources to the program. The governing body selects and ultimately supervises the employees of a municipality. This structure lends itself to an unavoidable appearance of impropriety which may imperil the public's confidence in the vitality and stability of a representative democracy, even when impropriety does not actually exist.

Therefore, the Local Government Ethics Law would prohibit offspring of sitting members of the governing body from serving as employees at the municipal summer camp.

The Board's opinion is limited to the specific matter and question as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the matter and question at issue.

Should you have any questions regarding this matter, please feel free to contact Nick Bennett at (609) 292-0479.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Neff', written over a large, light-colored scribble or stamp.

Thomas H. Neff, Chair
Local Finance Board



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 803
TRENTON, NJ 08625-0803

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

July 20, 2016

PERSONAL AND CONFIDENTIAL

[Redacted]

Re: Local Government Ethics Law
Advisory Opinion #LFB-16-006

Dear [Redacted]

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law (Law). More specifically, N.J.S.A. 40A:9-22.8 provides as follows:

A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines.

Your request for advice indicates that you currently serve as a [Redacted] Councilmember in the [Redacted]. You have informed the Board that your wife participates as a member of the public at Zoning Board of Adjustment meetings. Her participation is that of an engaged member of the public. Your wife does not have an application pending before the Zoning Board of Adjustment. She does not serve as the representative or employee of a party with an application pending before the Zoning Board of Adjustment. You have informed the Board that your wife's involvement is limited to attending and speaking during the public portion of the public meetings of the [Redacted] Zoning Board of Adjustment. Pursuant to the Municipal Land Use Law, a party may appeal a decision of the Zoning Board of Adjustment to the [Redacted] governing body. Should an appeal be made, you would be in a position to take official action on a matter in which your wife may have participated as a member of the public.

You have requested an opinion as to whether your wife's participating as a member of the public in the public portion of Zoning Board of Adjustment meetings creates a prohibitive involvement for you under the Local Government Ethics Law if a party appeals to the governing body a Zoning Board of Adjustment decision your wife participated in as a member of the public.



The applicable provision of the Local Government Ethics Law is N.J.S.A. 40A:9-22.5(d), which states:

N.J.S.A. 40A:9-22.5(d) No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement which might reasonably be expected to impair his objectivity or independence of judgment.

In light of the circumstances presented in your request for an advisory opinion, it is the opinion of the Board that the Local Government Ethics Law would not prohibit you from acting in your official capacity as Councilmember on any appeal of a Zoning Board of Adjustment decision in which your wife participated as a member of the public. Your wife's participation as a member of the public in the public portion of the public Zoning Board of Adjustment meetings does not constitute a direct or indirect financial or personal involvement which might reasonably be expected to impair your objectivity or independence of judgment.

Please be mindful, though, that the Board views participation as a member of the public in the public portion of a public meeting as significantly different from participating as an applicant or the representative of a Zoning Board of Adjustment applicant. While the Board recognizes that this is not the question before it, the Board cautions that if your wife was to be a party or a representative of a party with an application before the Zoning Board of Adjustment, the Local Government Ethics Law would not permit you to participate in your official capacity on that matter.

The Board's opinion is limited to the specific matter and question as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the matter and question at issue.

Should you have any questions regarding this matter, please feel free to contact Nick Bennett at (609) 292-0479.

Sincerely,



Timothy J. Cunningham, Chair
Local Finance Board

AO16-006.Response
TJC:nb

LEGAL OR BUSINESS CONFLICTS

	File Number	Question Presented	Board's Opinion	40A:9-22.5 Reference
1	95-010	Whether a municipal Tax Assessor and Member of a County Board of Taxation in a County in which the municipality is not situated may prepare an appraisal to be used by another appraiser in an appearance and testimony before a County Board of Taxation and/or the Tax Court in the County in which requestor serves.	Generally not prohibited by the Local Government Ethics Law, however the State Conflicts of Interest Law may apply.	(e), (g)
2	06-006	Whether a governing body member may participate in matters related to the adoption of a redevelopment plans when he owns one of the approximately 1,000 homes within the redevelopment plan area.	Not prohibited by the Local Government Ethics Law.	(d)
3	07-008	Whether a member of the governing body may serve on the governing body when she is the plaintiff in multiple lawsuits filed against the municipality.	Not prohibited by the Local Government Ethics Law from serving on the governing body. Prohibited from participating on matters related to the specific legal action.	(d)
4	08-007	Whether a part-time municipal zoning officer may serve as the construction manager for the construction of a new police headquarters.	Prohibited by the Local Government Ethics Law.	(a), (d), (e)
5	12-019	Whether a member of the governing body may participate in matters related to the municipal police department when the governing body member has a law suit pending against the police department.	Prohibited by the Local Government Ethics Law.	(c), (d)

6	15-013	Whether the mayor of a municipality is permitted to participate in his official capacity in matters related to the termination of a municipal employee when said employee is one of the mayor's approximately 9,000 clients in his private employment.	Not prohibited by the Local Government Ethics Law.	(a), (d), (e)
7	16-003	Whether a commissioner in a Commission form of government may participate in her official capacity in matters related to the appointment of an individual to a municipal position where that individual is one of 4,000 the clients of the commissioner in her private employment.	Not prohibited by the Local Government Ethics Law.	(a), (d), (e)



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS

CHRISTINE TODD WHITMAN
Governor

JANE M. KENNY
Commissioner

August 19, 1996

Re: Local Government Ethics Law
Advisory Opinion #LFB-95-010
Board Determination

Dear

The Local Finance Board (Board) has reviewed your request for an advisory opinion regarding the Local Government Ethics Law. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Law.

You have requested an opinion as to whether you may prepare an appraisal to be used by another appraiser in an appearance and testimony before a County Board of Taxation and/or the Tax Court. You presently hold the positions of Tax Assessor for the City [REDACTED] and member of the [REDACTED] County Board of Taxation. As a Certified Residential Real Estate Appraiser and a Certified Lead/Inspector Risk Assessor, you would like to engage in work preparing appraisals to measure the financial impact of lead contamination on real estate tax assessments. You advise that you are aware that a sitting tax assessor is not permitted to testify against another tax assessor at the County Tax Board level and would not prepare any appraisals involving communities in [REDACTED] County. However, you advise that the law is silent with regard to testifying in Tax Court and to preparing reports for same where you may not testify before the Tax Board or Tax Court.

The restrictions you outlined are not provisions of the Local Government Ethics Law and the Board cannot, therefore, comment on the applicability of those restrictions. The Board can only address your question as it relates to your position as tax assessor and how the Local Government Ethics Law is impacted. The Board, at its meeting of December 13, 1995, determined that generally a tax assessor would not be in violation of the Local Government Ethics Law by preparing appraisals for other appraisal firms, as long as the work is outside of the

municipality you serve and is unrelated to matters in the municipality. You are reminded, however, that you must comply with the provisions of the Ethics Law and are cautioned to be specifically aware of the following:

N.J.S.A. 40A:9-22.5(e) No local government officer or employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;

N.J.S.A. 40A:9-22.5(g) No local government officer or employee shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of or by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated;

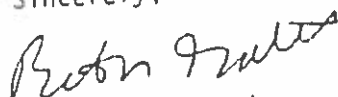
If you will be using information that you received in the performance of your office as tax assessor, and this information is not generally available to the public, there is a potential violation of N.J.S.A. 40A:9-22.5(g). There is also a potential violation of N.J.S.A. 40A:9-22.5(e) if the preparation of appraisals might reasonably be expected to prejudice your independence of judgment in the exercise of your official duties as tax assessor.

Further, as a member of the [redacted] County Board of Taxation, Attorney General Opinion No. 91-0141 (November 18, 1991) concluded that Commissioners of a County Board of Taxation are not "local government officers or employees." Rather, the Commissioners are State officers and, therefore, subject to the requirements of the State Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq. Thus, you may also wish to obtain an opinion from the Executive Commission on Ethical Standards.

The Board's opinion is limited to the specific question at issue, as it relates to your position as tax assessor for the City [redacted]. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the question at issue.

Should you have any questions regarding this matter, please feel free to contact Patricia Parkin McNamara at (609) 292-0479.

Sincerely,


Beth Gates, Chair
Local Finance Board



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS

JON S. CORZINE
Governor

SUSAN BASS LEVIN
Commissioner

April 17, 2006

PERSONAL & CONFIDENTIAL

Re: Local Government Ethics Law
Advisory Opinion #LFB-06-006
Board Determination

Dear _____

The Local Finance Board (Board) has reviewed your request for an advisory opinion regarding the Local Government Ethics Law. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Law.

You requested an advisory opinion as to whether you may vote with _____ Council on the _____ Redevelopment Plan comprised of approximately 1,000 "to be acquired" properties, where you are an individual homeowner within the plan whose property is to be included in the plan. It is understood that the "to be acquired" list of properties consists of about 1,000 properties which constitute the _____ Redevelopment Plan. Within the plan are three housing components: 1) _____ run by the Housing Authority, consisting of 300+ properties; 2) _____, a private owned development, consisting of 300+ properties; and 3) 300+ individual private homeowners, of which you are a homeowner of one property.

The Local Government Ethics Law states, in pertinent part:

N.J.S.A. 40A:9-22.5(d) No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.



April 17, 2006
Page 2

N.J.S.A. 40A:9-22.4 "The board in interpreting and applying the provisions of this act shall recognize that under the principles of democracy, public officers and employees cannot and should not be expected to be without any personal interest in the decisions and policies of government; that citizens who are government officers and employees have a right to private interests of a personal, financial and economic nature; and that standards of conduct shall distinguish between those conflicts of interest which are legitimate and unavoidable in a free society and those conflicts of interest which are prejudicial and material and are, therefore, corruptive of democracy and free society.

Please be advised that, given the circumstances described in your request letter and in the additional information you subsequently provided by telephone, the Board opines that the extent of your "interest" in the [redacted] Redevelopment Plan does not rise to a level necessitating your recusal from voting with [redacted] Council on a redevelopment plan under which plan your residential property is included in the "to be acquired" list of properties. However, please be further advised that if there are other future actions that impact your property more directly, you may need to recuse yourself. If such matters arise in the future, you may make another request of the Board which will address the matter at that time.

The Board's opinion is limited to the specific matter as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the question at issue.

Should you have any questions regarding this matter, please feel free to contact David Nerro at (609) 292-0479.

Sincerely,



Susan Jacobucci, Chair
Local Finance Board



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS

JON S. CORZINE
Governor

SUSAN BASS LEVIN
Commissioner

July 20, 2007

Re: Local Government Ethics Law
Advisory Opinion #LFB-07-008
Board Determination

Dear [redacted]:

The Local Finance Board (Board) has reviewed your request for an advisory opinion regarding the Local Government Ethics Law. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Law.

You requested an advisory opinion as to whether you, as a newly elected Council Member for the [redacted] and the plaintiff in [redacted] pending lawsuits against the [redacted] which entail alleged violations of OPRA, OPMA and common law right to access, may serve as a member of the [redacted] Council provided that you recuse yourself from any discussion of the [redacted] pending lawsuits by the [redacted] Council.

The Local Government Ethics Law states:

N.J.S.A. 40A: 9-22.5.d. No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

The Board issues its opinion that the Local Government Ethics Law would *not* prohibit you from serving as a member of the [redacted] Council provided that you take no official action on any matter impacting the [redacted] pending lawsuits and recuse yourself from any participation in discussions of the lawsuits by the [redacted] Council.



July 20, 2007
Page 2

The Board's opinion is limited to the specific matter as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the question at issue.

Should you have any questions regarding this matter, please feel free to contact David Nenko at (609) 292-0479.

Sincerely,



Susan Jacobucci, Chair
Local Finance Board

SJ:DN:la
AO-07-008 Response



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS

JON S. CORZINE
Governor

JOSEPH V. DORIA, JR.
Commissioner

March 26, 2008

PERSONAL & CONFIDENTIAL

Re: Local Government Ethics Law
Advisory Opinion #LFB-08-007
Board Determination

Dear _____:

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law (Law).

As the part-time zoning officer for the _____, you have requested an advisory opinion as to whether you may be the Construction Manager for the building of a new police headquarters. It is understood that the job would require ensuring that the work performed is in conformance with contract specifications and would also entail interacting with the contractor, architect and Mayor and Council.

The Local Government Ethics Law states:

N.J.S.A. 40A: 9-22.5.a. No local government officer or employee or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;

N.J.S.A. 40A: 9-22.5.d. No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment; and

N.J.S.A. 40A: 9-22.5.e. No local government officer or employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties.



March 26, 2008

Page 2

The Board opines that the Ethics Law would prohibit you from working as an independent contractor for the same Municipality in which you are employed as a part-time zoning officer. Alternatively, if the Municipality were to establish a position and salary, by ordinance, and hire you to fill that position, you would not be in violation of the Ethics Law when performing duties in accordance with that position.

The Board's opinion is limited to the specific matter and question as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the matter and question at issue.

Should you have any questions regarding this matter, please feel free to contact David Nenno at (609) 292-0479.

Sincerely,



Susan Jacobucci, Chair
Local Finance Board

SJ:DN:la

AO-08-007 response



State of New Jersey
 DEPARTMENT OF COMMUNITY AFFAIRS
 101 SOUTH BROAD STREET
 PO BOX 803
 TRENTON, NJ 08625-0803

CHRIS CHRISTIE
Governor
 KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

February 19, 2013

PERSONAL AND CONFIDENTIAL

Re: Local Government Ethics Law
 Advisory Opinion #LFB-12-019

Dear _____:

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law (Law). More specifically, N.J.S.A. 40A:9-22.8 provides as follows:

A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines.

Your request indicates that you are requesting this opinion on your own behalf. The facts, as the Board understands them when rendering this opinion, are that you currently serve as a member of the _____ Council. On _____, you filed a civil lawsuit against the _____, the _____ Police Department and a specific detective seeking compensatory damages and other relief related to an improper stop of your motor vehicle by that _____ Police Department detective. You have requested an opinion as to whether the Local Government Ethics Law would prohibit you from participating in matters relating to the _____ Police Department, including budget, policy and hiring discussions unrelated to said detective or your pending law suit.

The applicable provisions of the Local Government Ethics Law are N.J.S.A. 40A:9-22.5(c), and N.J.S.A. 40A:9-22.5(d), which provide:

(c) No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others;



And,

(d) No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

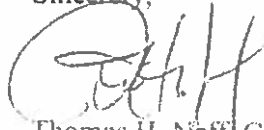
In light of the circumstances represented in your request for an advisory opinion, it is the opinion of the Board that the Local Government Ethics Law would prohibit you from participating in all matters involving the Police Department of the [REDACTED]. The pending lawsuit represents a direct financial or personal involvement, which might reasonably be expected to impair your objectivity or independence of judgment, and which therefore disqualifies you from acting in your official capacity in any matter related to the budget, policy, and hiring decisions of the Department. Additionally, the opportunity exists for an individual serving on the governing body of a local government while simultaneously suing that local government to secure or attempt to secure unwarranted privilege for himself in the form of information that would not be available to a similarly situated member of the general public. Therefore, you would be prohibited from participating in or voting on any matters related to the [REDACTED] Police Department.

You also requested an opinion as to whether you may receive a copy of a report concerning issues of police staffing that has been marked "Privileged and Confidential". Please be advised that the issuance of opinions requiring interpretation of the Open Public Records Act is beyond the scope of the Board's jurisdiction.

The Board's opinion is limited to the specific matter and question as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the matter and question at issue.

Should you have any questions regarding this matter, please feel free to contact Nick Bennett at (609) 292-0479.

Sincerely,



Thomas H. Neff, Chair
Local Finance Board



State of New Jersey
 DEPARTMENT OF COMMUNITY AFFAIRS
 101 SOUTH BROAD STREET
 PO Box 803
 TRENTON, NJ 08625-0803

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

December 28, 2015

PERSONAL AND CONFIDENTIAL

[REDACTED]

[REDACTED]

Re: Local Government Ethics Law
 Advisory Opinion #LFB-15-013

Dear

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law (Law). More specifically, N.J.S.A. 40A:9-22.8 provides as follows:

A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines.

You indicate that you are making this Advisory Opinion request on behalf of the Mayor of **[REDACTED]** operates under the Township Committee form of government. In this form of government, the Mayor participates and votes as a member of the Committee.

In your request, you state that the **[REDACTED]** is considering terminating a **[REDACTED]** employee's employment. That employee is a patient of the Mayor in the Mayor's private capacity of physician. Upon request from the Board, you have indicated that the private practice of the Mayor includes five internists and one nurse practitioner. The practice treats approximately 9,000 patients in a given year.



The employee that the governing body is considering replacing receives health benefits from the _____. Pursuant to the health benefits protocol, the employee pays a standard co-pay to the practice of the Mayor at any time the employee is treated. The balance of the costs of the treatment are billed to the municipal insurer.

You have requested an opinion from the Board as to whether the Local Government Ethics Law would prohibit the Mayor from participating in his official capacity in matters related to the termination of the municipal employee's employment.

The applicable provisions of the Local Government Ethics Law are N.J.S.A. 40A:9-22.5(a), N.J.S.A. 40A:9-22.5(d), and N.J.S.A. 40A:9-22.5(e), which state:

N.J.S.A. 40A:9-22.5(a) No local government officer or employee or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest; and,

N.J.S.A. 40A:9-22.5(d) No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment; and,

N.J.S.A. 40A:9-22.5(e) No local government officer or employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties; and,

In light of the circumstances presented in your request for an advisory opinion, it is the opinion of the Board that the Local Government Ethics Law would not prohibit the Mayor from participating in discussions and voting on the termination of the employment of a municipal employee when that employee is also a patient of the Mayor. The employee is but one of approximately 9,000 patients served by the Mayor in his private capacity. The medical treatment of the employee by the Mayor does not create a substantial conflict with the proper discharge of the Mayor's duties in the public interest. Furthermore, though there is a financial involvement between the employee and the Mayor, it is the Board's opinion that this involvement cannot reasonably be expected to impair the objectivity or independence of judgment of the Mayor when he is called upon to act in his official capacity on this matter as the financial involvement is deemed diminimus.

For this reason, the Board has determined that the Local Government Ethics Law would not prohibit the Mayor of the _____ from participating in discussions and voting on the termination of the employment of a municipal employee who is treated by the Mayor in the Mayor's private medical practice.

The Board's opinion is limited to the specific matter and question as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the matter and question at issue.

Should you have any questions regarding this matter, please feel free to contact Nick Bennett at (609) 292-0479.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy J. Cunningham", written over a horizontal line.

Timothy J. Cunningham, Chair
Local Finance Board

AO15-013.Response
TJC:nb



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 803
TRENTON, NJ 08625-0803

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

July 20, 2016

PERSONAL AND CONFIDENTIAL

[Redacted]

Re: Local Government Ethics Law
Advisory Opinion #LFB-16-003

Dear [Redacted],

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law (Law). More specifically, N.J.S.A. 40A:9-22.8 provides as follows:

A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines.

The [Redacted] operates under the Commission form of government. In this form of government, each Commissioner is appointed as the Director of a municipal department. You were appointed as the Director of Public Affairs.

In your request, you state that the [Redacted] is considering the appointment of a public defender. The public defender position is overseen by the Director of Public Safety. Only one individual responded to the [Redacted] bid for the advertised position. The responding individual served in this position last year.

Your request states that you are a practicing [Redacted] in your private capacity. You are a sole practitioner with a staff of three, serving approximately 4,000 patients. You contact your patients once per year to remind them to schedule an annual checkup.



Since 1993, the individual currently under consideration for the public defender position has been a patient of yours. Your records indicate that you have examined him on 12 occasions between 1993 and 2016. In that time, your office has been paid approximately \$1,000 by the patient or his insurance provider. As a vendor to the municipality, the individual serving as the public defender is not entitled to receive health benefits from the _____.

You have requested an opinion from the Board as to whether the Local Government Ethics Law would prohibit you from participating in your official capacity in matters related to the appointment of a patient of yours in your _____ practice to a municipal position.

The applicable provisions of the Local Government Ethics Law are N.J.S.A. 40A:9-22.5(a), N.J.S.A. 40A:9-22.5(d), and N.J.S.A. 40A:9-22.5(e), which state:

N.J.S.A. 40A:9-22.5(a) No local government officer or employee or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest; and,

N.J.S.A. 40A:9-22.5(d) No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment; and,

N.J.S.A. 40A:9-22.5(e) No local government officer or employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;

In light of the circumstances presented in your request for an advisory opinion, it is the opinion of the Board that the Local Government Ethics Law would not prohibit you from participating in discussions and voting on the appointment of an individual to a municipal position when that appointee is also a patient you serve in your private practice. The public defender candidate is but one of approximately 4,000 patients served by you in your private capacity. The medical treatment of this patient by you does not create a substantial conflict with the proper discharge of your duties in the public interest. Furthermore, though there is a financial involvement between you and patient, it is the Board's opinion that this involvement cannot reasonably be expected to impair your objectivity or independence of judgment when you are called upon to act in your official capacity on this matter as the financial involvement is deemed diminimus.

For this reason, the Board has determined that the Local Government Ethics Law would not prohibit you from participating in discussions and voting on the appointment of a municipal vendor who is treated by you in your private medical practice.

The Board's opinion is limited to the specific matter and question as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the matter and question at issue.

Should you have any questions regarding this matter, please feel free to contact Nick Bennett at (609) 292-0479.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy J. Cunningham", with a long horizontal flourish extending to the right.

Timothy J. Cunningham, Chair
Local Finance Board

AO16-003.Response
TJC:nb

INCOMPATIBILITY OF OFFICE/OUTSIDE EMPLOYMENT

	File Number	Question Presented	Board's Opinion	40A:9-22.5 Reference
1	91-011	Whether a member of a municipal Board of Appeals may work in or render services to the same municipality.	Not prohibited by the Local Government Ethics Law	(a), (h)
2	92-004/93-019	Whether publicly elected Board of Fire Commission Members, who handle the budget and expenditures of fire tax dollars, also serve as elected officials of the fire companies in their own districts, when they handle company monies raised or contributed privately.	Prohibited by the Local Government Ethics Law	(d), (e)
3	93-003	Whether an elected member of a Board of Chosen Freeholders may also serve as municipal prosecutor in four municipalities within the county he serves as Freeholder.	Not prohibited by the Local Government Ethics Law	(a), (d), (e)
4	93-023	Whether a Mayor may appointment a real estate developer to the municipal Planning Board if the potential appointee in question is a builder of both residential and commercial property within the municipality.	Not prohibited by the Local Government Ethics Law	(c), (h)
5	95-001	Whether a Councilperson, who is employed by the school district within the same municipality, is prohibited from participating in matters concerning the school budget in the event the budget is defeated by voters.	Not prohibited by the Local Government Ethics Law	(d), (i)

6	07-003	Whether a municipal employee may run for a position on the governing body, and, if elected, simultaneously serve in both positions.	Not prohibited from running for office. Prohibited from simultaneously holding both positions.	(d), (e)
7	08-013	Whether a county purchasing agent may run for and, if elected, serve as a member of a municipal governing body in the same county.	Not prohibited by the Local Government Ethics Law from running for or holding the positions simultaneously.	(d)
8	08-014	Whether a municipal employee, who serves as a special aide to the Mayor, would be prohibited from continuing her employment if she were to be appointed to fill a vacant seat on the governing body.	Prohibited by the Local Government Ethics Law from simultaneously holding both positions.	(d), (e)
9	10-007	Whether a member of the governing body, who also serves on the volunteer fire department in the municipality, may participate in votes related to the volunteer fire department.	Prohibited by the Local Government Ethics Law.	(d)
10	11-001	Whether a member of the governing body, who also serves as a volunteer fire fighter in the municipality, may act in his official capacity on matters involving the volunteer fire department.	Prohibited by the Local Government Ethics Law.	(d)
11	11-006	Whether a secretary to the planning board and secretary to the board of health may run for, and, if elected, serve as a member of the governing body while simultaneously continuing to hold the secretary positions.	Prohibited by the Local Government Ethics Law.	(d), (e)

12	12-007	<p>Concerning a member of the governing body, who also serves on the municipal ambulance corp:</p> <p>(1) Whether, if the governing body member recuses himself from one topic relating to the ambulance corps, must he recuse himself from all other topics related to the ambulance corps.</p> <p>(2) Whether it is permissible for the governing body member to participate in discussion regarding the replacement of liaison to the ambulance corps.</p> <p>(3) Whether the governing body member may cast a vote on any issues related to the ambulance corps.</p>	Prohibited by the Local Government Ethics Law on all counts.	(d), as well as <u>N.J.S.A</u> 40A:9-4(c)(6)
13	14-002	Whether an elected fire district commissioner may simultaneously serve as deputy chief in a fire district under the oversight of the fire commission.	Prohibited by the Local Government Ethics Law.	(d), (e)
14	14-003	Whether the executive director of a municipal utilities authority may run for and, if elected, serve as a member of the municipal governing body.	Prohibited by the Local Government Ethics Law.	(e)



State of New Jersey

JIM FLORIO
GOVERNOR

DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION OF LOCAL GOVERNMENT SERVICES
LOCAL FINANCE BOARD

MELVIN R. PRIMAS, Jr.
COMMISSIONER

Billy Skokowski, Sr., *Chairman*

101 SOUTH BROAD STREET
CN 803
TRENTON, N. J. 08625-0803

BOARD MEMBERS

- James P. Barry
- Robert H. Grasmere
- Stanley Iacono
- Joseph Iannaconi, Jr.
- Robert C. Miller
- Harold F. Mullin
- Susan L. Nickolopoulos

April 20, 1992

Re: Local Government Ethics Law
Advisory Opinion #LFB91-011

Dear Mr. .

The Local Finance Board (Board) has reviewed your request seeking an advisory opinion regarding the Local Government Ethics Law. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether or not a proposed activity or conduct would constitute a violation of the provisions of the law.

You have inquired as to whether a member of the Board of Appeals may work or render services in the Borough of

Under the provision of N.J.S.A. 40A:9-22.5 (a) it states:

No local government officer or employee or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest.



April 20, 1992
Page 2

A member of the Board of Appeals may work or render professional services in the Borough or so long as such activity does not cause or appear to cause a substantial conflict with the discharge of duties related to the Board of Appeals.

Members of the Board, however, may not represent others before the same local government agency in which that member serves. That is, members of the Board may not represent another party before the Borough or Under the provision of N.J.S.A. 40A:9-22.5 (h) it states:

No local government officer or employee or business organization in which he has an interest shall represent any person or party other than the local government in connection with any cause, proceeding, application or other matter pending before any agency in the local government in which he serves. This provision shall not be deemed to prohibit one local government employee from representing another local government employee where the local government agency is the employer and the representation is within the context of official labor union or similar representational responsibilities.

The Office of the Attorney General, in Opinion # 91-0135 determined that,

any local government officer or employee or business organization in which he has an interest, is prohibited from representing a person or party, other than the local government or his own personal interests, in connection with any cause, proceeding, application or other matter pending before any agency in the local government agency.

A copy of this opinion is enclosed for your reference. The Board advises that this is a general guide based upon the general question posed. Further clarification can be found in the above referenced opinion. If you should have a fact-specific situation related to this issue, additional requests for advisory opinions should be sent to the Local Finance Board.

If you have any questions regarding this matter, please feel free to contact Patricia Parkin McNamara at (609) 633-6344.

Sincerely,



Barry Skokowski, Sr., Chairman
Local Finance Board

55:PPM:jak

Enclosure



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS

CHRISTINE TODD WHITMAN
Governor

HARRIET DERMAN
Commissioner

LOCAL FINANCE BOARD

LOCAL GOVERNMENT ETHICS LAW

Board of Fire Commissioners
Advisory Opinion # 92-004
Advisory Opinion # 93-019

QUESTION SUMMARY:

Can publicly elected Board of Fire Commission Members, who handle the budget and expenditures of fire tax dollars, also serve as elected officials of the fire companies in their own districts, when they handle company monies raised or contributed privately?

There are approximately 188 Fire Districts and 489 Fire Departments in the State of New Jersey. The impact of an advisory opinion on this matter will be far-reaching as there are potentially dozens of fire officials who stand to be affected by the Local Finance Board's decision. For these reasons, the Board is issuing this as a public Advisory Opinion and not a confidential Advisory Opinion as provided for in the Local Government Ethics Law, N.J.S.A. 40A:9-22.8.

DISCUSSION:

The Local Government Ethics Law, N.J.S.A. 40A:9-22.5(e), states:

No local government officer or employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;

The question at issue concerns compatibility of offices and the discussion to follow will address this issue.

The statute pertaining to Fire Districts, N.J.S.A. 40A:14-70, provides that the governing body of a municipality, "shall designate a territorial location or locations for use as a fire district or districts and, by resolution, provide for the election of a board of fire commissioners for the district or each district, to consist of five persons, residents therein, and specify the date, time and place for the election of the first board." Furthermore it states that, "The said body corporate shall have the power to acquire, hold, lease, sell or otherwise convey in its corporate name such real and personal property as the purposes of the corporation shall require."

N.J.S.A. 40A:14-78.1, provides that, "The Fire Commissioners of any fire district shall introduce and approve the annual budget..."

N.J.S.A. 40A:14-70.1.a., states, "Any person desiring to form a volunteer fire company to be located within or otherwise servicing the area encompassing a fire district or other type of volunteer organization which has as its objective the prevention of fires or regulation of fire hazards to life and property therein shall first present to the board of fire commissioners a written application for the organization of such a company." It furthermore provides that, "The board of fire commissioners, after considering such application and approving the members of the proposed company, may by resolution grant the petition and constitute such applicants a volunteer fire company of the district."

N.J.S.A. 40A:14-70.1.b., states, "The members of the company shall be under the supervision and control of the board of fire commissioners and in performing fire duty shall be deemed to be exercising a governmental function;"

Michael A. Pane, in his work NEW JERSEY PRACTICE: Local Government Law, addresses the doctrine of incompatibility of offices. He states,

In one sense, incompatibility of office represents a special type of conflict. It is a situation in which the nature of two offices individually is such that they cannot be executed with care or ability by the same individual either because one is subordinate to the other or because one office in some other fashion interferes with the other. Mr. Pane furthermore states, "In one case the classic definition of incompatibility was restated as follows:

Offices are incompatible when there is a conflict or inconsistency in their functions. Therefore offices are not compatible when one is subordinate to or subject to the supervision or control of the other or the duties of the offices clash requiring the officer to prefer one obligation over the other."

Mr. Pane cites *Hollander v. Watson*, 167 NJ Super. 588. at 592, 401 A.2d 560 at 562 (Law Div. 1979), affirmed 173 NJ Super. 300, 414 A.2d 275 (App. Div. 1980).

Mr. Pane continues, "Traditionally the doctrine of incompatibility has been applied with such thoroughness that a person, having accepted a second office incompatible with the first office held, was deemed to have vacated the first office. The doctrine has been made flexible to the extent of usually allowing an election between the two offices by the individual caught in the incompatibility." (*McCue v. Antisell*, 105 NJ Super. 128, 251 A.2d 308 (App Div. 1969).

To revisit N.J.S.A. 40A:14-70.1.b., the members of a fire company shall be under both the supervision and control of the board of fire commissioners..."

This question surrounds the issue of dual office holding and whether holding the positions of Fire Commissioner and local fire company board member or officer would place an individual in a situation where their independence of judgement might reasonably be expected to be prejudiced as they exercise their official duties.

A second question is whether holding these positions would require the individual in question to act in an official capacity in a matter where he has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

N.J.S.A. 40A:9-22.5(d) states:

No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment;

The official duties and responsibilities of a Fire Commissioner affect the status of the members of the local fire company. See statutes previously mentioned, specifically N.J.S.A. 40A:14-70.1.b.: "The members of the company shall be under the supervision and control of the board of fire commissioners and in performing fire duty shall be deemed to be exercising a governmental function;"

Using the standard cited in New Jersey Practice, section 358, Incompatibility of Office, by Michael Pane, these offices appear to be incompatible because "one is subordinate to or subject to the supervision or control of the other or the duties of the offices clash requiring the officer to prefer one obligation over the other."

The matter of incompatibility, as expounded by Mr. Pane, has relevance to the Local Government Ethics Law in that objectivity is clouded to the extent that the individual's independence of judgment would reasonably be expected to be prejudiced in the exercise of his official duties.

The appearance of a conflict is more than apparent in the situation where a Fire Commissioner may act preferentially or antagonistically toward the fire company where he is also an officer. Additionally, the information he gathers as a result of his position with the fire company can be used for or against that company when the Commissioners set their budget and policy priorities. One person should not be privy to both sides of this information. All budget decisions of the Fire Commission would impact on how the fire company is being run and would, in turn, affect the priorities of the individual companies.

Additionally, fire company officials are voted for by the members of the individual fire company, not the public. It is likely that a Fire Commissioner is the supervisor of the fire company Chief in his capacity as Fire Commissioner while, at the same time, being subordinate to the same Chief as a fire fighter. Further, in fire districts with more than one fire company, the independence of judgment of the Fire Commissioner who is a member of one district is impaired by his lack of knowledge in the other fire companies that have no specific representation on the Board of Fire Commissioners.

SYNOPSIS OF PUBLIC HEARING:

Having detailed the statutory support for a determination, it is now necessary to apply the premise to current organizational needs. Namely, will the public be served State-wide by a determination that the two positions are inherently incompatible?

The Board held a public hearing on this subject on July 12, 1994. The State Association of Fire Districts presented a position that a majority of their 102 Fire District members believe that elected officials are in conflict by also serving as commissioners. They did not believe that volunteer members of the fire company are in conflict. There was additional support for their position from individual fire districts who have instituted policies whereby Fire Commissioners cannot hold an elected or appointed position in the fire department. It is not known if these districts are already included in the survey presented by the State Association of Fire Districts.

In support of the Association's position, their testimony states as follows:

We (the association) feel that any elected officer of a fire company who is in a position to suggest, recommend or request services, supplies and or other financial encumbrances of the board would appear to be in conflict. Our consensus shows that the ranking fire officers, i.e. chief and assistant chief would be a definite conflict. We also feel in some cases the ranking executive officers, i.e. president and vice president may also have roles that could be considered in conflict.....

The State Association of Fire Districts is therefore requesting that the Board consider that there is a conflict of interest for fire company chiefs and assistant chiefs serving on boards of fire commissioners. Other fire company officers if serving on a board of fire commissioners may be in conflict. However, conflict does not extend to members and non officers of a fire company.

A review of the input reveals that there are numerous arrangements for fire services in New Jersey and that perhaps not all will be satisfied by the Board maintaining one position in this area. It is within the Board's jurisdiction, however, to respond to the request for an advisory opinion on this matter. It appears that an appropriate guideline then would be to endorse the limitation set forth by the Association.

ADVISORY OPINION:

The Board has determined that such a proposed activity, holding the positions of Commissioner of a fire district and elected or ranking officer of a fire company in that district, would, in its opinion, constitute a violation of the Local Government Ethics Law. The officials affected by this opinion include the chief, deputy chief, president and vice president. More specifically, such dual office holding violates N.J.S.A. 40A:9-22.5(d) and (e) as stated below.

(d) No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment;

(e) No local government officer or employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;

The community of interest to hold the position of Fire Commissioner is significantly small in most of the districts established in New Jersey. Determining that all of the fire company members would be in conflict with the Ethics Law if they serve as Fire Commissioners may not serve the community. Thus, the Board's position is that only those officials who are in a position to suggest, recommend or request services, supplies and or other financial encumbrances of the board would be in conflict for serving both positions simultaneously. This again is interpreted to include the chief, deputy chief, president and vice president of the fire company.

Additionally, if there are cases where fire fighters or officers are paid or receive some other sizable and tangible benefit, officers and fire fighters could be in violation of Sections (d) and (e) if they serve as Fire Commissioners. In these cases, they would be acting as employer and employee. This arrangement would appear to be incompatibility of offices.

Further, by limiting the dual office holding to the positions listed, the Board does not imply that the Ethics Law can not be violated by some specific action/activity of Fire Commissioners or fire company members. There is the potential for a person serving the district or fire company to act in their official capacity in a matter where they have a direct or indirect financial or personal involvement that might reasonably be expected to impair their objectivity or independence of judgment. Thus, individuals could be found to be in violation of the Ethics Law. Such specific actions or activities would be reviewed by the Board as separate ethics complaints.

The Board has also elected to make this opinion public, except for the names of the requesting agents, since it will effect numerous municipalities in the State.

The Board further advises that this opinion in no way questions the integrity of any individuals currently in this situation or their ability to maintain their independence of judgment. This opinion is limited to the question at issue and due to the fact sensitive nature of the circumstances, an advisory opinion may only be applied to the question at issue.

February 8, 1995

DATE



BETH GATES, CHAIR
LOCAL FINANCE BOARD



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION OF LOCAL GOVERNMENT SERVICES
LOCAL FINANCE BOARD

JIM FLORIO
GOVERNOR

LOCATION

WILLIAM ASHBY
COMMUNITY AFFAIRS BUILDING
101 SOUTH BROAD STREET
TRENTON, NEW JERSEY

June 16, 1993

STEPHANIE R. BUSH
COMMISSIONER

BARRY SKOKOWSKI SR.
CHAIRMAN

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LAURENCE S. WEISS
MAILING ADDRESS:

CN 803
TRENTON, NJ 08625-0803

Re: Local Government Ethics Law
Advisory Opinion #93-003

Dear

The Local Finance Board (Board) has reviewed your request for an advisory opinion regarding the Local Government Ethics Law. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the law.

You have inquired as to whether an elected Freeholder may also serve as municipal prosecutor in four municipalities within the county he serves as a Freeholder.

You have advised the Board that you are an attorney-at-law of the State of New Jersey and an elected Freeholder in
Currently, you also serve as municipal prosecutor in four municipalities within the County.

The Local Government Ethics Law contains no specific restrictions on serving at different levels of government as is the case with a County Freeholder and municipal prosecutor. Secondly, there does not appear to be any reporting relationship between a local prosecutor and a County Freeholder which would lead to a discussion of incompatibility of office or engaging in activity which is in substantial conflict with the proper discharge of duties in the public interest (N.J.S.A. 40A:9-22.5a).

There are municipalities in County. All of the elected freeholders reside in at least one of these municipalities and, therefore, could potentially favor one of the municipalities. Further, they might have a business in one of the municipalities; thus causing them to favor that municipality as well. It seems unlikely that the mere acceptance of employment as municipal prosecutor might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties on an ongoing basis or, for any general matter which is addressed by the Freeholder Board, any more than residence or business ownership would. Thus, it does not appear to be a violation of section 5e.



Therefore, the activity itself is not restricted by the Ethics Law. There is, however, the potential for the public to believe that a conflict exists concerning specific actions where a Freeholder may give preferential treatment to those municipalities which employ and provide him with at least a portion of his livelihood. Specifically, a complaint may be forthcoming as a result of 5c, securing unwarranted privileges or advantages in receiving the positions in return for possible preferential treatment to those municipalities as Freeholder. It would also seem that the Freeholder could act in his official capacity in a matter where he has a personal and financial involvement that might reasonably be expected to impair his objectivity or independence of judgment where these municipalities are involved to a greater extent than all other municipalities in the county; thus causing a violation of section 5d.

Absent any such allegations, the Board finds that merely holding the elected office of Freeholder and appointed position of municipal prosecutor in four municipalities is not violative of the Local Government Ethics Law.

You are cautioned, however, that the potential for conflict does exist as a result of holding both positions. Specific circumstances may arise causing you to favor one of these municipalities over another in your official capacity as Freeholder. Since you receive compensation from certain municipalities and serve them as a local government employee, acting in your official Freeholder capacity favoring specific municipalities could be viewed as a conflict. You are advised to avoid even the appearance of conflict where your duties as Freeholder may impact individually or specifically only on those municipalities you serve as municipal prosecutor.

Please be advised that this opinion is limited to the specific facts and circumstances contained in your correspondence and cannot be applied to similar facts elsewhere. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the question at issue; thus, any persons presented with similar circumstances should seek a separate opinion from the Board.

At your request, the Board voted to make this advisory opinion public, and you are hereby notified that this is a public document.

If you have any questions regarding this matter, please feel free to contact Patricia Parkin McNamara at (609) 633-6344.

Sincerely,



Barry Skokowski, Sr., Chairman
Local Finance Board



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS

CHRISTINE TODD WHITMAN
GOVERNOR

LOCATION

WILLIAM ASHBY
COMMUNITY AFFAIRS BUILDING
101 SOUTH BROAD STREET
TRENTON, NEW JERSEY

April 15, 1994

HARRIET DERMAN
COMMISSIONER

MAILING ADDRESS

CN 800
TRENTON NJ 08625-0800

Re: Local Government Ethics Law
Advisory Opinion #LFB-93-023
Determination

Dear [REDACTED]

The Local Finance Board (Board) has reviewed your request for an advisory opinion regarding the Local Government Ethics Law. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the law.

You have requested an opinion as to the suitability of your proposed appointment of a real estate developer to the Township Planning Board if the individual in question is a builder of both residential and commercial property within the Township.

It is understood that the candidate being considered for appointment to the Township Planning Board is already an alternate member of the Planning Board who conducts business within the Township of [REDACTED] and has developed both residential homes and commercial property within the Township. Furthermore, the candidate is presently performing construction within the Township.



You are anticipating that there will be situations in the future where the candidate in question will become involved in development projects in the Township. However, you have indicated that the candidate has always identified any potential conflicts and has removed himself from the Planning Board and any discussions concerning either proposed or pending applications before the Planning Board. Furthermore, the candidate does not represent himself before the Planning Board, rather, he retains the services of an attorney to represent his applications before the Planning Board.

The Local Government Ethics Law, N.J.S.A. 40A:9-22.5 (h), states:

No local government officer or employee or business organization in which he has an interest shall represent any person or party other than the local government in connection with any cause, proceeding, application or other matter pending before any agency in the local government in which he serves. This provision shall not be deemed to prohibit one local government employee from representing another local government employee where the local government agency is the employer and the representation is within the context of official labor union or similar representational responsibilities.

Attorney General opinion #91-0135, concludes that the representation provision in the law, "prohibits person subject to the law from representing any person or party, other than the local government in any matter before any agency in the local government he serves."

No exceptions are given other than that outlined in the statute of one local government employee representing another local government employee in labor relations matters.

This opinion also concludes that, "The statute does not merely prohibit representation in legal proceedings in which an attorney would be necessary to provide such representation. Indeed, it is not unusual for professionals, other than attorneys, to submit applications and documents to local government agencies on behalf of another for planning board approval, for zoning approval, for a construction permit, or for a variety of other locally required approvals."

Furthermore, the opinion states, "One of the specific purposes of the Local Government Ethics Law is to avoid perceived conflicts between the local government officer's or employee's private interests and his public duties. N.J.S.A. 40A:9-22.2(c). The prohibition of N.J.S.A. 40A:9-22.5(h) are related to this legislative purpose."

A Planning Board Member who conducts business within the Township of [REDACTED] and who has developed both residential homes and commercial property within the Township and who is presently performing construction within the Township, would likely have his name on applications pending before an agency in the local government in which he serves; in this case the very Planning Board on which he sits. In light of Attorney General Opinion #91-0135, the fact that the candidate does not represent himself before the Planning Board, but rather, retains the services of an attorney to represent his applications before the Board, would not clear the candidate of potential violations of N.J.S.A. 40A:9-22.5 (h). The

candidate appears to be at least moderately, if not heavily, involved in ongoing construction within the Township. The magnitude of this involvement, and the potential appearance of his name on applications as discussed, appear to render his appointment to the Township Planning Board as troubling.

However, the Local Government Ethics Law does not proscribe the appointment. It cannot be assumed that the developer-appointee will not abide by the law.

Therefore, if appointed, the real estate developer-appointee may have to excuse himself on matters affecting his business interests or to refrain from conducting certain development activity in the Township. The issue of disqualification in voting is extremely fact-sensitive. While the appointment is not prohibited, the appointment may cause the official to become involved in a tangled web of making conflicts of interest determinations or subjecting himself to conflicts of interest allegations.

The Supreme Court, in Wyzykowski v. Rizas, 132 N.J. 509 (1993), determined that a Mayor was not per se prohibited from submitting a development application to the local planning board in order to allow the Mayor to develop his own property. Thus, while the developer in the Township of [REDACTED] - if appointed by the Mayor - may be required to often recuse himself, it cannot be presumed that the developer-appointee is prohibited per se from appearing before various local boards or submitting applications concerning his own property.

Therefore, the Board, at its February 10, 1994, meeting, discussed this matter and concluded that the proposed activity; namely, the appointment of a real estate developer to the Township Planning Board if the individual in question is a builder of both residential and commercial property within the Township, would not constitute a violation of the provisions of this act. However, it must be understood that, if appointed, the real estate developer-appointee may have to recuse himself on matters affecting his business interests or to refrain from conducting certain development activity in the Township.

This opinion is limited to the specific request at issue. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the question at issue.

If you have any questions regarding this matter, please feel free to contact Patricia Parkin McNamara or David Nenno of the Local Finance Board staff at (609) 633-6344.

Sincerely,


Beth Gates, Chair
Local Finance Board

BG:PPM:paw



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS

ELIZABETH TODD WHITMAN
Governor

HARRIET DEBMAN
Commissioner

June 30, 1995

Re: Local Government Ethics Law
Advisory Opinion #LFB-95-001
Board Determination

Dear

The Local Finance Board (Board) has reviewed your request for an advisory opinion regarding the Local Government Ethics Law. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the law.

You have requested an opinion as to whether a Councilperson, who is employed by the school district, is prohibited from both participating in discussions and voting on issues concerning the school budget in the event the budget is defeated.

It is understood that you have recently been elected to the [redacted] Council. You have been a teacher in the [redacted] School District for more than twenty years. The [redacted] School District has an elected school board. In the event the budget for the school district is defeated in the annual school election, the budget is required by law to be reviewed by the Mayor and Council for a determination as to what, if any, budgetary line items are to be reduced.

It is generally concluded that under common law doctrines, there are incompatibility of offices and conflict of interests. The legislature has enacted N.J.S.A. 18A:6-8.4, which provides that no person employed by a school district is disqualified by reasons of this employment from holding any elective or appointive State, county, or municipal office, except as a member of the school board employing the person. Further, the Court in Schuniger v. O'Reilly-Lange, 226 N.J. Super 828 (App. Div. 1988), concludes that this statute permitted a school nurse/council member to fully participate as a member of the municipal governing body.



including voting on the school budget (enclosed). It appears, therefore, that the statutes specifically allow a councilperson, employed by the school district, to vote on a defeated school budget.

Additionally, Council, in their deliberation on the school budget, cannot make any changes in contracts that have already been negotiated and approved by the [REDACTED] School Board. These contracts are already in place and will not be changed by the governing body. Generally speaking, it would be extremely difficult for a councilperson who is a school employee to benefit from reviewing and voting on the school budget.

It would, however, be prudent for you to abstain on any matter which might affect you more directly than other teachers or employees in the district. There is the potential for a violation of Section 5(d) of the Ethics Law, which reads as follows:

No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

An example is a new program provided for in the budget that you would be responsible for or a proposed position that is not part of the union contract, but if approved, you would occupy. Also, depending on which extra curricular activities you participate in, or if you are part of any special program, there is the potential for a violation of section 5(d) by voting on the budget which would provide for these specific activities or programs. These are factors that have not been explained in the opinion request. Please also be advised that Section 5(i) of the Ethics Law provides that you would not be in conflict if you do not gain more than other members of the group by your action as a councilmember.

N.J.S.A. 40A:5-22.5(i) states:

No local government officer shall be deemed in conflict with these provisions if, by reason of his participation in the enactment of any ordinance, resolution or other matter required to be voted upon or which is subject to executive approval or veto, no material or monetary gain accrues to him as a member of any business, profession, occupation or group, to any greater extent than any gain could reasonably be expected to accrue to any other member of such business, profession, occupation or group.

Advisory Opinion 95-001
PAGE 3

Therefore the Board opined that a school district employee, who is a councilwoman from the same municipality, is not prohibited from both participating in discussions and voting on the school budget after that budget is rejected by the voters, unless the vote results in an action where a material or monetary gain accrues to the councilmember to a greater extent than that gain could reasonably be expected to accrue to any other employee of the school district.

This opinion is limited to the specific request at issue. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the question at issue.

If you have any questions regarding this matter, please feel free to contact Patricia Parkin McNamara of the Local Finance Board staff at (609) 292-0479.

Sincerely,


Beth Gates, Chair
Local Finance Board

BG:APC
0364x
Enclosure

State v. Mahoney, 238 N.J. Super. 611
Dec 11 2008 NJ Super 611

[3] The State's arguments that the evidence discovered during the chosen preliminary search was admissible pursuant to the inevitable discovery rule or as having been disclosed in the course of a search incident to defendant's arrest were not raised below. Sound principles of appellate procedure preclude this court from considering these contentions as they are not jurisdictional nor do they concern matters of great public interest. *State v. Spout*, 63 N.J. 433, 460 (1974); *Miller v. Boyer Indemnity Ins. Co.*, 62 N.J. 289, 291 (1973). The presentation of new issues on appeal "is precluded in the event of an error which encompasses that, except in extraordinary situations, as where public policy or jurisdiction are involved, a party shall make his points in the court of first instance before urging them as grounds on appeal." *State v. Douglas*, 56 N.J. Super. 230, 233 (App. Div. 1959), cert. den., 30 N.J. 603 (1959); cert. den., 361 U.S. 914, 81 S.Ct. 407, 4 L.Ed.2d 363 (1960).

Accordingly, the order entered June 29, 1980 is affirmed in part and reversed in part. The matter is remanded to the Superior Court Law Division, Essex County, for further proceedings consistent with this opinion.

ARLON SCHULMAN, CLAIRIFF-SESTROVITZ, v. BRUNO
PIETRO BELLO-LANDO JERSEY CITY BOARD OF SCHOOL
ESTIMATE AND MAYOR AND COUNCIL OF THE CITY OF
JERSEY CITY, DEFENDANTS-APPELLANTS

Superior Court of New Jersey
Appellate Division

Argued May 4, 1983—Reheard August 4, 1984

3520485

Members of city board of school estimate and board of education appeal for removal of school officers, who was an elected

238 N.J. Super. 611
Schulman v. Ortolano, et al.
Dec 11 2008 NJ Super 611

number of city council from her position on board of estimate. The Superior Court, Law Division, Hudson County, ordered appellee's removal because of conflict of interest, and also ordered relief. The Superior Court, Appellate Division, Rensselaer, P.J.A. held that appellee was not disqualified from holding position on board, even though she was employed as school officer in school district.

Reversed.

1. Officers and Public Employees 4-301

School nurse, who was also elected member of city council, was not disqualified from receiving school budget as member of city's board of estimate under statute providing teachers and educational professionals in public and publicly supported educational systems to hold elected or appointed state, county or municipal offices. N.J.S.A. 18A:6-1.

2. Statutes 4-214

Legislature's message relating to enactment of legislation is part of legislative process and may be considered in determining legislative intent.

3. Officers and Public Employees 4-311

Commissioner's concept of responsibility of officers and members of interests must yield to clearly expressed legislative intent.

Before Judges HING, CANTARINI and GREENWOOD

Richard A. Proedman argued the cause for defendant appellee. Bernabete Ortolano-Lando (Kushner, Butera & J. J. J. J.), attorney, Richard A. Proedman and David Proedman, were the boys.

Paul W. Mackay, First Assistant Corporation Counsel, argued the cause for defendant appellants. City of Jersey City

Schulman v. O'Reilly-Lando, 225 N.J. Super
Case No. 225 (11) Super 626

Companies, 217 N.J. Super. 126, 129 (App. Div. 1987), aff'd o.b.
110 N.J. 67 (1988); Durazo v. Edgus, 19 N.J. 443, 451 (1955);
2A Sutherland, Statutory Construction, (4th ed. 1984) § 46.01
at 73

(2. j) The extant legislative history consists of Governor
Cahill's message upon signing the legislation. It reads
Governor William T. Cahill today signed legislation providing teachers and
educational professionals in public and publicly supported educational systems
to hold elective or appointive state, county or municipal offices.

The Governor in the signing of Assembly Bill 135 sponsored by Assembly
man Thomas H. Kraus (R. Essex) noted, however, that no one may serve as a
member of the board of a body by which he is employed.

The Governor said the bill will resolve questions raised by recent court
decisions on the legality of teachers serving in governmental positions. It
provides a safeguard to prevent a teacher from serving on the same board by
which he is employed. New Jersey has been fortunate in many instances in
which teachers have served with distinction in various phases of Government.
They are very well qualified to do so and this legislation will permit them to
continue such service.

The legislation grew out of a Newark County case in May of this year in
which it was noted that a teacher may not serve as a member of a municipal
governing body because of the potential conflict of interest that would be
presented by the teacher. (Probably an allusion to *Woodbury v. City Council of Camden*, 121
N.J. Super. 263 (App. Div. 1972) or perhaps *Kovlman v. Passaic*, 121
N.J. Super. 71, 31 (App. Div. 1972).)

The Governor's message is part of the legislative process and
may be considered in determining legislative intent. *McCliffman*
v. New Jersey Public Broadcasting Authority, 88 N.J. 112, 159
(1981). The intent appears clear to permit teacher staff
members to participate fully in the process of Government
excepting only membership on the board of education by which
they are employed. (Common law concepts of incompatibility of
offices and conflict of interests, see *Bentley v. Ozard*, 39 N.J.
529, 543 (1960), must yield to the legislative will as so clearly
expressed.)

Reversed.

225 N.J. Super. *Coarls v. Beargiate v. Bird*
Case No. 225 (N.J. Super. 631)

THE COURTS AT BEARGIATE, A CONDOMINIUM, PLAINTIFF,
v. DAVID H. BIRD, IV, AND CAROL BIRD JOINTLY,
SEVERALLY AND IN THE ALTERNATIVE, DEFENDANTS.

Superior Court of New Jersey
Chancery Division Atlantic County

Decided January 29, 1988

SYBOWSKI

Condominium association brought action to enforce provision in condominium master deed, requiring unit owners to remove and replace certain windows installed in unit. The Superior Court, Chancery Division, Atlantic County, Ruum, J.T.C., temporarily assigned, held that: (1) unit owners' power of attorney in title was not justified in presuming that condominium manager had authority to give oral permission to install different windows given existence of bylaws to contrary, and (2) association was entitled to enforce bylaws.

(Reversed accordingly.)

1. Condominium \leftrightarrow 3, 7

Condominium unit owner's rights are both protected and limited by master deed and bylaws incorporated in it. N.J.S.A. 46:8B-1 et seq., 46:8B-3, subd. n., 46:8B-9(a)

2. Condominium \leftrightarrow 13

Condominium owners' predecessor in title was not justified in presuming that condominium manager had authority to give oral permission to make structural change in unit, given existence of bylaws which specified detailed procedure to be followed for obtaining written permission from board of directors to make such change.



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS

JON S. CORZINE
Governor

April 24, 2007

SUSAN BASS LEVIN
Commissioner

[REDACTED]

Re: Local Government Ethics Law
Advisory Opinion #LFB-07-003
Board Determination

Dear _____:

The Local Finance Board (Board) has reviewed your request for an advisory opinion regarding the Local Government Ethics Law. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Law.

As the Attorney for _____, you requested an advisory opinion as to whether _____, who is also a Senior Clerk Typist in the _____ Police Department, may run for the _____ Council in the November 2007 General Election and, if elected, serve simultaneously as a Member of Council and Senior Clerk Typist.

The Local Government Ethics Law states:

N.J.S.A. 40A: 9-22.5.d. No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment; and

N.J.S.A. 40A: 9-22.5.e. No local government officer or employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties.

Incompatibility of office has been defined by the court as "where in the established governmental scheme one office is subordinate to another, or subject to its supervision or control, or the duties clash, inviting the incumbent to prefer one obligation to another." Belleville Tp. v. Fornarotto, 228 NJ Super. 412 (1988).



Page 2

The position of Senior Clerk Typist in the _____ Police Department is subordinate to the _____ Governing Body. An elected Council Member position carries with it the responsibility for voting on matters related to the Senior Clerk Typist's public employment. Belleville Tp. v. Fornarotto, 228 NJ Super. 412 (1988) finds that "two positions create the possibility of undue influence of one elected official on the independent judgment of a second because the first official is also the employer of the second." A member of the _____ Council may create positions and terminate officers for good cause, fund municipal functions and control their finances, make appointments or confirm nominations to municipal positions and possess executive responsibilities. Furthermore, one position is subject to the supervision and control by the other. In short, the offices have the potential to clash. Such potential might reasonably be expected to prejudice the independence of judgment of a Council Member in the exercise of their official duties.

The Board issues its opinion that the Local Government Ethics Law would not prohibit your client from running for the _____ Council in the November 2007 General Election. However, if elected, your client would be prohibited from serving simultaneously as a Member of Council and Senior Clerk Typist in the Police Department. If she desires to serve as a _____ Council Member, she must resign from her Senior Clerk Typist position.

The Board's opinion is limited to the specific matter as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the question at issue.

Should you have any questions regarding this matter, please feel free to contact David Nenno at (609) 292-0479.

Sincerely,



Susan Jacobucci, Chair
Local Finance Board



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS

JON S. CORZINE
Governor

JOSEPH V. DORIA, JR.
Commissioner

May 27, 2008

PERSONAL & CONFIDENTIAL

Re: Local Government Ethics Law
Advisory Opinion #LFB-08-013
Board Determination

Dear _____:

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law (Law).

The Local Government Ethics Law, N.J.S.A. 40A:9-22.8, states:

"A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines."

As the Purchasing Agent in _____ County, you have requested an advisory opinion as to whether you may run for and, if elected, serve as a _____ Committee Member (in the same County) while serving simultaneously as the _____ County Purchasing Agent.

The Board opines that the Ethics Law would not prohibit you from running for and, if elected, serving as a _____ Committee Member (in the same County) while serving simultaneously as the _____ County Purchasing Agent.



May 27, 2008

Page 2

The Local Government Ethics Law states:

N.J.S.A. 40A: 9-22.5.d. No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

As a _____ Committee Member, you would be required to abstain on any matters where you have a direct or indirect financial or personal involvement that might reasonably be expected to impair your objectivity or independence of judgment. Therefore, you should recuse yourself on any matters that might impact your employment with _____ County.

The Board's opinion is limited to the specific matter and question as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the matter and question at issue.

Should you have any questions regarding this matter, please feel free to contact David Nenno at (609) 292-0479.

Sincerely,



Susan Jacobucci, Chair
Local Finance Board

SJ:DN:la

AO-08-013 response



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS

JON S. CORZINE
Governor

JOSEPH V. DORIA, JR.
Commissioner

September 19, 2008

PERSONAL & CONFIDENTIAL

Re: Local Government Ethics Law
Advisory Opinion #LFB-08-014
Board Determination

Dear _____

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law (Law).

The Local Government Ethics Law, N.J.S.A. 40A:9-22.8, states:

"A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines."

As the _____ Attorney for the _____, you have requested an advisory opinion on behalf of _____ a Special Aide to the Mayor, asking whether _____ would have to resign her post as Aide to the Mayor if she were to be named to fill a vacancy on the _____ Council created by a Council Member who is expected to resign.



September 19, 2008

Page 2

The Local Government Ethics Law states:

N.J.S.A. 40A: 9-22.5.d. No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment; and

N.J.S.A. 40A: 9-22.5.e. No local government officer or employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties.

Incompatibility of office has been defined by the court as "where in the established governmental scheme one office is subordinate to another, or subject to its supervision or control, or the duties clash, inviting the incumbent to prefer one obligation to another." Belleville Tp. v. Fornarotto, 228 NJ Super. 412 (1988).

Upon consideration of the official duties of a _____ Council Member, it would appear that the position of Aide to the Mayor is subordinate to the _____ Council. A _____ Council Member position carries with it the responsibility for voting on matters related to the individual's public employment. Belleville Tp. v. Fornarotto, 228 NJ Super. 412 (1988), finds that "two positions create the possibility of undue influence of one elected official on the independent judgment of a second because the first official is also the employer of the second." A Member of the Council may create positions and terminate officers for good cause, fund municipal functions and control their finances, make appointments or confirm nominations to municipal positions and possess executive responsibilities. Furthermore, one position is subject to supervision and control by the other. In short, the offices have the potential to clash. Such potential might reasonably be expected to prejudice the independence of judgment of a Council Member in the exercise of her official duties.

The Board opines that the Ethics Law requires _____ to resign her post as Aide to the Mayor if she were to fill a vacancy on the _____ Council created by a Council Member who is expected to resign.

The Board's opinion is limited to the specific matter and question as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the matter and question at issue.

September 19, 2008

Page 3

Should you have any questions regarding this matter, please feel free to contact David
Nenno at (609) 292-0479.

Sincerely,



Susan Jacobucci, Chair
Local Finance Board

SJ:DN:la
AO-08-014.response



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 803
TRENTON, NJ 08625-0803

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFFA
Commissioner

September 29, 2010

PERSONAL AND CONFIDENTIAL

Re: Local Government Ethics Law
Advisory Opinion #LFB-10-007
Board Determination

Dear _____

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law (Law). More specifically, N.J.S.A. 40A:9-22.8 provides as follows:

"A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines."

Your request indicates that you are the _____, Solicitor for the _____. You are writing on behalf of a Council member, who serves as a volunteer fireman for the city. You asked whether this individual is required to recuse himself on the following matters involving the volunteer fire department:

- (1.) The purchase of capital equipment – cash outlay and/or Bond Ordinance
- (2.) Accepting applications for new volunteer members
- (3.) Approving union contracts for the paid members
- (4.) Approval of fire department rules and regulations
- (5.) Approval of Fire Director



The applicable provision of the Local Government Ethics Law is N.J.S.A. 40A:9-22.5(d) which provides:

No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

In light of the circumstances represented in your current request for an advisory opinion, it is the opinion of the Board that the Local Government Ethics Law would prohibit the council member from participating in all five (5) matters because it is reasonable to expect that his objectivity or independence of judgment would be impaired. A direct personal interest exists where this council member is expected to act. Thus, there is a disqualifying personal interest in voting on matters that affect the volunteer fire department. Therefore, the council member would be prohibited from participating in or voting on such matters because it is reasonable to expect that his objectivity or independence of judgment would be impaired.

The Board's opinion is limited to the specific matter and question as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the matter and question at issue.

Should you have any questions regarding this matter, please feel free to contact Nick Bennett at (609) 292-0479.

Sincerely,



Thomas H. Neff, Chair
Local Finance Board

TN:NB
AO-10-007Response



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 803
TRENTON, NJ 08625-0803

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Commissioner

March 7, 2011

PERSONAL AND CONFIDENTIAL

[Redacted]

REVISED
Re: Local Government Ethics Law
Advisory Opinion #LFB-11-001
Board Determination

Dear [Redacted]

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law (Law). More specifically, N.J.S.A. 40A:9-22.8 provides as follows:

"A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines."

Your request indicates that you are a member of the [Redacted] Council where you serve as the Finance Chairman. You also serve on the [Redacted] Volunteer Fire Department. You have asked if the Local Government Ethics Law prohibits you from participating in your official capacity on the following matters involving the volunteer fire department:

- (1.) Voting or discussing appointments for Chief and other officers
- (2.) Voting or discussing the purchase of a new vehicle, truck or other equipment if it is also part of a multipurpose bond ordinance.
- (3.) Voting or discussing the budget with the fire department during budget hearings.
- (4.) Voting or discussing anything related to the fire department.
- (5.) Voting or discussing items on a bill list that includes items for the fire department.



The applicable provision of the Local Government Ethics Law is N.J.S.A. 40A:9-22.5(d) which provides:

No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

In light of the circumstances represented in your current request for an advisory opinion, it is the opinion of the Board that the Local Government Ethics Law would prohibit you from participating in all five (5) matters. A direct personal interest exists where you are expected to act. Thus, there is a disqualifying personal interest in voting on matters that affect the Volunteer Fire Department. Therefore, you would be prohibited from participating in or voting on such matters because it is reasonable to expect that your objectivity or independence of judgment may be impaired.

Additionally, the Board directs you to the recent amendments to N.J.S.A. 40A:9-4(c)(6) which reads, in pertinent part:

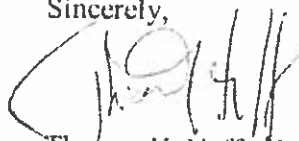
“It shall be lawful for a member of a volunteer fire company, ambulance, first aid, hazardous materials, or rescue squad, including an officer of the company or squad, to serve as an elected official on the governing body of the municipal government wherein the emergency services are provided; however, the volunteer shall recuse himself from any vote concerning the emergency services provider of which he is a member.”

It is the opinion of the Board that, though this law falls outside of the Board’s purview, it directly addresses your questions.

The Board's opinion is limited to the specific matter and question as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the matter and question at issue.

Should you have any questions regarding this matter, please feel free to contact Nick Bennett at (609) 292-0479.

Sincerely,



Thomas H. Neff, Chair
Local Finance Board



State of New Jersey
 DEPARTMENT OF COMMUNITY AFFAIRS
 101 SOUTH BROAD STREET
 PO BOX 803
 TRENTON, NJ 08625-0803

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Commissioner

March 15, 2011

PERSONAL AND CONFIDENTIAL

Re: Local Government Ethics Law
 Advisory Opinion #LFB-11-006

Dear _____

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law. More specifically, N.J.S.A. 40A:9-22.8 provides as follows:

A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines.

Your request for advice indicates that you are currently employed by the _____, serving in two positions – Planning Board Secretary and Board of Health Secretary. You have indicated that you are a voting member of the Planning Board. Your duties with the Board of Health include filing material forwarded by the _____ County Health Department and issuing Food Handlers licenses. You have asked whether you may run for the elected position of _____ Council Member and, if elected, serve on the _____ Council while retaining your paid positions in the _____

The Local Government Ethics Law states:

N.J.S.A. 40A:9-22.5.(d) No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment; and



N.J.S.A. 40A: 9-22.5.e. No local government officer or employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties.

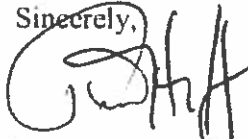
It is the opinion of the Board that the Local Government Ethics Law would prohibit you from serving simultaneously as a _____ Council Member and as an employee of the _____ receiving a stipend. Namely, you would be prohibited from serving on the _____ Council and as Planning Board Secretary and Board of Health Secretary.

~~Incompatibility of office has been defined by the court as "where in the established governmental scheme one office is subordinate to another, or subject to its supervision or control, or the duties clash, inviting the incumbent to prefer one obligation to another." Belleville Tp. v. Fornarotto, 228 NJ Super. 412 (1988). In short, the offices have the potential to clash. Such potential might reasonably be expected to prejudice the independence of judgment of a Council Member in the exercise of official duties. The nature of the offices individually is such that the same individual cannot carry out the duties without one interfering with the other or one being subordinate to the other.~~

The advisory opinion set forth in this letter is limited to the specific factual circumstances and questions set forth in your request for advice. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the specific facts and questions presented. Further, this advisory opinion pertains only to situations that may arise in the future and not to any circumstances that may have already occurred.

Should you have any questions regarding this matter, please feel free to contact Nick Bennett at (609) 292-0479.

Sincerely,



Thomas H. Nef, Chair
Local Finance Board

TIN:nb
AO11-006.Response



State of New Jersey
 DEPARTMENT OF COMMUNITY AFFAIRS
 101 SOUTH BROAD STREET
 PO Box 803
 TRENTON, NJ 08625-0803

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Acting Commissioner

October 9, 2012

PERSONAL AND CONFIDENTIAL

Re: Local Government Ethics Law
 Advisory Opinion #LFB-12-007
 Board Determination

Dear _____

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law (Law). More specifically, N.J.S.A. 40A:9-22.8 provides as follows:

“A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines.”

Your request indicates that you are a member of the _____, Council. You also serve on the _____ Ambulance Corps and are an officer on the Corps Board. You have asked for an advisory opinion from the Local Finance Board regarding the impact of the Local Government Ethics Law upon the following matters:

- (1) Whether the governing body has the authority to force you to recuse yourself from any discussions regarding the Ambulance Corps.
- (2) Whether, if you recuse yourself from one topic relating to the Ambulance Corps, must you recuse yourself from all other topics related to the Ambulance Corps.
- (3) Whether it is permissible for you to participate in discussion regarding the replacement of liaison to the Ambulance Corps.
- (4) Whether you may cast a vote on any issues related to the Ambulance Corps.

The applicable provision of the Local Government Ethics Law is N.J.S.A. 40A:9-22.5(d) which provides:



No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

The Board is statutorily permitted to offer advisory opinions only to an individual contemplating an action or a representative of that individual who is requesting the opinion on behalf of the individual contemplating the action. Therefore, it will not render an opinion on the propriety of governing body members forcing you to recuse yourself from any discussions related to the Ambulance Corps.

In light of the circumstances represented in your current request for an advisory opinion, it is the opinion of the Board that the Local Government Ethics Law would prohibit you from participating in the remaining three (3) matters. A direct personal involvement exists where you are expected to act. Thus, there is a disqualifying personal involvement in participating or voting on matters that affect the [redacted] Ambulance Corps while you are a member of the Corps Board. Therefore, you would be prohibited from participating in or voting on such matters because it is reasonable to expect that your objectivity or independence of judgment may be impaired.

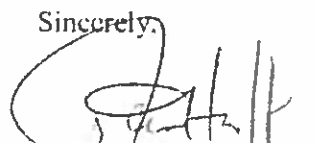
Additionally, the Board directs you to the recent amendments to the New Jersey law governing dual office holding, N.J.S.A. 40A:9-4(c)(6) which reads, in pertinent part:

“It shall be lawful for a member of a volunteer fire company, ambulance, first aid, hazardous materials, or rescue squad, including an officer of the company or squad, to serve as an elected official on the governing body of the municipal government wherein the emergency services are provided; however, the volunteer shall recuse himself from any vote concerning the emergency services provider of which he is a member.”

It is the opinion of the Board that, though this law falls outside of the Board’s purview, it appears to be relevant to your questions.

The Board’s opinion is limited to the specific matter and question as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the matter and question at issue.

Should you have any questions regarding this matter, please feel free to contact Nick Bennett at (609) 292-0479.

Sincerely,

Thomas H. Neff, Chair
Local Finance Board



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 803
TRENTON, NJ 08625-0803

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

June 19, 2014

Personal and Confidential

Re: Local Government Ethics Law
Advisory Opinion LFB #14-002

Dear _____:

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law (Law). More specifically, N.J.S.A. 40A:9-22.8 provides:

A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines.

Your request indicates that you are currently a Deputy Fire Chief in a volunteer fire company that is under the authority of a Fire District, and that you have been elected to serve as Fire Commissioner in the same district. You are aware of prior instances (set forth in Advisory Opinions 92-004 and 93-019) in which the Board has concluded that holding the position of Fire Commissioner, and simultaneously serving as an elected or ranking officer of a fire company in the same fire district, creates a conflict of interest in violation of the Local Government Ethics Law. You wish to know whether the same result would apply in your particular situation, given the "operational structure or hierarchy" of the Fire District Board of Commissioners for which you have been elected, and the nature of your duties as Deputy Chief. You note that the Fire District has a paid District Chief, who is responsible for the day to day operations, which include purchasing and budgetary responsibilities with approval of the District Commissioners. The volunteer Chief reports to the paid District Chief. Further, pursuant to the Constitution and By-



Laws of the _____ Fire Company Number 1 of _____, the Deputy Chief assumes command in the Chief's absence, and shall have all rights and responsibilities of that position.

The applicable provisions of the Local Government Ethics Law are N.J.S.A. 40A:9-22.5(d) and N.J.S.A. 40A:9-22.5(e) which provide:

(d) No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment;

and,

(e) No local government officer or employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties.

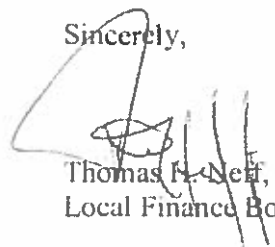
In light of the circumstances represented in your request for an advisory opinion, it is the opinion of the Board that the Local Government Ethics Law would prohibit you from simultaneously holding the positions of Fire District Commissioner and Deputy Chief. The chain of command as set forth in the bylaws of the fire commission provides for the potential that as deputy chief, you would be in a position to make requests to the Commission that you would later be tasked with reviewing as a Commissioner. Recusing yourself from your responsibilities to the Fire Commission would not suitably eliminate this potential conflict.

For this reason, the Board has opined that the Local Government Ethics Law would prohibit you from simultaneously serving as Fire Commissioner and Deputy Chief of a fire company within the same district.

The Board's opinion is limited to the specific matter and question as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the matter and question at issue.

Should you have any questions regarding this matter, please feel free to contact Nick Bennett at (609) 292-0479.

Sincerely,



Thomas F. Neff, Chair
Local Finance Board



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 803
TRENTON, NJ 08625-0803

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

April 16, 2014

PERSONAL AND CONFIDENTIAL

Re: Local Government Ethics Law
Advisory Opinion #LFB-14-003

Dear _____

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law (Law). More specifically, N.J.S.A. 40A:9-22.8 provides as follows:

A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines.

You indicate that you are asking for an advisory opinion on your own behalf. You are currently the Executive Director of the _____ Municipal Utilities Authority. You are considering running for the _____ Committee. The governing body of the _____ Municipal Utilities Authority consists of seven Commissioners. Each Commissioner is appointed by the _____ Committee for a five year term.

You have requested an opinion as to whether the Local Government Ethics Law would prohibit you from simultaneously serving as the Executive Director of the _____ Municipal Utilities Authority and as a member of the _____ Committee.

The applicable provision of the Local Government Ethics Law is N.J.S.A. 40A:9-22.5(e):

No local government officer or employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties.

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In light of the circumstances presented in your request for an advisory opinion, it is the opinion of the Board that the Local Government Ethics Law would prohibit you from simultaneously serving as the Executive Director of the _____ Municipal Utilities Authority and as a member of the _____ Committee.

An inherent conflict exists that would prevent you from simultaneously holding these positions. The governing body, pursuant to the Municipal and County Utilities Authorities Law, N.J.S.A. 40:14B-1 et seq. and the Local Authorities Fiscal Control Law, N.J.S.A. 40A:5A-1 et seq., is authorized to create and dissolve the _____ Municipal Utilities Authority. You have a full time, paid position with the _____ Municipal Utilities Authority. A single individual holding positions on the governing body and as Executive Director could create a situation where there is no meaningful governing body supervision of the _____ Municipal Utilities Authority by that governing body member.

It is the opinion of the Board that the role you would serve as a member of the governing body presents not just the appearance of conflict, but a fertile opportunity for your objectivity or independence of judgment to be impaired in the exercise of your official duties. Recusing yourself from matters related to the Municipal Utilities Authority would not sufficiently eliminate this potential for conflict. Therefore, the Local Government Ethics Law would prohibit you from simultaneously serving as Executive Director of the _____ Municipal Utilities Authority and as a member of the _____ Committee.

Please note, that the Local Government Ethics Law would not prohibit you from running for a position on the _____ Committee while serving as the Executive Director of the _____ Municipal Utilities Authority. As set forth above, though, you cannot simultaneously hold both positions.

The Board's opinion is limited to the specific matter and question as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the matter and question at issue.

Should you have any questions regarding this matter, please feel free to contact Nick Bennett at (609) 292-0479.

Sincerely,



Thomas H. Neff, Chair
Local Finance Board

OTHER

	File Number	Question Presented	Board's Opinion	40A:9-22.5 Reference
1	91-016	Whether an employee of a municipal Fire Department employee may be awarded a bid for a computer system by the City.	The request is governed by the Faulkner Act	<u>N.J.S.A.</u> 40:69A-163
2	91-020	Whether a member of the municipal Council may testify on behalf of a constituent before the municipal Planning Board.	Factual testimony not prohibited by the Local Government Ethics Law	(h)
3	92-028	Whether a member of the municipal Planning Board, who has sole ownership of a construction company which renovates historic office buildings, may accept a contract from the municipality as lowest bidder to do construction work for the municipality which entails the installation of playground equipment and renovation of buildings.	The request is governed by the Faulkner Act	<u>N.J.S.A.</u> 40:69A-163
4	96-006	Whether an individual may prepare appraisals for a County where he is also a member of the County Board of Taxation.	State Conflicts of Interest Law more properly applies	<u>N.J.S.A.</u> 52:13D-12
5	12-009	Whether a member of the governing body may post links to his personal social media pages on the municipal website.	Not prohibited by the Local Government Ethics Law, provided that the public is aware that the link will direct them to a separate website.	(c)
6	14-020	Whether an elected official may purchase a tax lien certificate sold on a tax delinquent property in her municipality, and whether an elected official may bid in an auction for municipally owned assets.	Not prohibited by the Local Government Ethics Law provided that the elected official does not receive confidential information related to either process by way of his/her position with the governing body.	(c), (d), (g)



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION OF LOCAL GOVERNMENT SERVICES
LOCAL FINANCE BOARD
101 SOUTH BROAD STREET
CN 803
TRENTON, N. J. 08625-0803

JIM FLORIO
GOVERNOR

MELVIN R. PRIMAS
COMMISSIONER

Barry Skokowski, Sr., *Chairman*

BOARD MEMBERS:

- James P. Barry
- Robert H. Grasmere
- Stanley Iacono
- Joseph Iannacoti, Jr.
- Robert C. Miller
- Harold F. Mullin
- Susan L. Nickolopoulos

June 12, 1992

Re: Local Government Ethics Law
Advisory Opinion #91-016

LEGAL COUNSEL

The Local Finance Board (Board) has reviewed your request seeking an advisory opinion regarding the Local Government Ethics Law. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether a proposed activity or conduct would constitute a violation of the provisions of the law.

You have inquired as to whether a Fire Department employee for the City of _____ can be awarded a bid for a computer system by the City.

The Board has verified that the City is governed by the Faulkner Act. This act precludes the rendering of an advisory opinion from the Board due to the provision of N.J.S.A. 40:69A-163. This provision places specific restrictions on the activity you have proposed. The Board recommends that you seek the advice of your City Solicitor as it pertains to the Faulkner Act.

If you have any questions regarding this matter, please feel free to contact Patricia Parkin McNamara at (609) 633-6344.

Sincerely,

Barry Skokowski, Sr., Chairman
Local Finance Board

BS:PPM:jak





State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION OF LOCAL GOVERNMENT SERVICES
LOCAL FINANCE BOARD
101 SOUTH BROAD STREET
CN 803
TRENTON, N. J. 08625-0803

MELVIN R. PRIMAS, JR.
COMMISSIONER

TIM FLORIO
GOVERNOR

Larry Skokowski, Sr., Chairman

BOARD MEMBERS:

- James P. Barry
- Robert H. Grasmere
- Stanley Iacono
- Joseph Iannacori, Jr.
- Robert C. Miller
- Harold F. Mullin
- Rusan L. Nickolopoulos

January 29, 1992



Re: Local Government Ethics Law
Advisory Opinion 91-020
Reference v. 222

Dear

The Local Finance Board (Board) has reviewed your request for an advisory opinion regarding the Local Government Ethics Law. You have inquired as to whether a member of the City Council may testify on behalf of a constituent before the City's Planning Board.

Under the provisions of N.J.S.A. 40A:9-22.5, (h),

No local government officer or employee or business organization in which he has an interest shall represent any person or party other than the local government in connection with any cause, proceeding, application, or other matter pending before any agency in which he serves.

In opinion 91-0135, the Office of the Attorney General defines "representation" as a situation in which the local government officer stands in the place of another. You have indicated that a member of City Council wishes to "testify" on behalf of a constituent. A member may give factual testimony on behalf of a constituent but may not represent, as defined, that party before the Planning Board.



[REDACTED]
January 29, 1992
Page 2

In conclusion, the Board has determined that, as long as the proposed activity is narrowly limited to giving factual testimony, the proposed activity or conduct would not constitute a violation of this provision of the law. However, members of City Council should be cautioned that while such conduct is not per se prohibited, an official is prohibited by the Law from using his/her position to secure an unwarranted privilege or advantage for others. Accordingly, providing factual testimony before the City Planning Board may be appropriate. On the other hand, appearing before the City Planning Board for the general purpose of influencing the Board's decision may be inappropriate. Due to the fact sensitive nature of such appearances, specific situations may require additional advisory opinions should the facts differ from those presented in this matter.

If you have any questions regarding this matter, please feel free to contact Patricia Parkin McNamara at (609) 633-6344.

Sincerely,



Barry Skokowski, Sr., Chairman
Local Finance Board

BS:PPM:jak



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION OF LOCAL GOVERNMENT SERVICES
LOCAL FINANCE BOARD

JIM FLORIO
GOVERNOR

LOCATION

WILLIAM ASHBY
COMMUNITY AFFAIRS BUILDING
101 SOUTH BROAD STREET
TRENTON, NEW JERSEY

STEPHANIE P. BUSH
COMMISSIONER

BARRY SKONOWSKI SR.
CHAIRMAN

BOARD MEMBERS

JAMES P. BARRY
ROBERT M. GRASMERE
STANLEY IACONO
JOSEPH IANNACONI JR.
ROBERT C. MILLER
SUSAN NICKOLOPOULOS
LAURENCE S. WEISS

MAILING ADDRESS:
CN 803
TRENTON, NJ 08625-0803

March 12, 1993

Re: Local Government Ethics Law
Advisory Opinion #92-028
Board Determination

Dear I.

The Local Finance Board (Board) has reviewed your request for an advisory opinion regarding the Local Government Ethics Law. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the law.

You have inquired as to whether you, as a member of the City Planning Board, who has sole ownership of a construction company which renovates historic office buildings in downtown [redacted] may accept a contract from the City as lowest bidder to do construction work for the City which entails the installation of playground equipment and renovation of buildings.

The Board has verified that the [redacted] is governed by the Faulkner Act. This Act precludes the rendering of an advisory opinion from the Board on this matter due to the provision of N.J.S.A. 40A:69A-163. This provision places specific restrictions on the activity you have proposed. The Board recommends that you seek the advice of your City Solicitor as it pertains to the Faulkner Act restrictions.

Please be advised that, while the Board cannot determine conclusively that a conflict of interest exists in this matter, there is a potential for a conflict in that you are in a position where you may influence the bid procedures. If you have influenced the bid in any way, you would clearly be in violation of ethical standards. Additionally, the Board has noted that your private business interests, that of renovating historic office buildings in the same City in which you serve as a planning board official, raises questions as to a conflict occurring at some point in the future.

Attorney General opinion #91-0135 concludes that the representation provision in the law, N.J.S.A. 40A:9-22.5 (h), "prohibits person subject to the law from representing any person or party, other than the local government in any matter before any agency in the local government he serves."

This opinion also concludes that "The statute does not merely prohibit representation in legal proceedings in which an attorney would be necessary to provide such representation. Indeed, it is not unusual for professionals, other than attorneys, to submit applications and documents to local government agencies on behalf of another for planning board approval, for zoning approval, for a construction permit, or for a variety of other locally required approvals."

A copy of this opinion is enclosed for your review, as it may relate to your clients of _____ and your position on the City of _____ Planning Board.

In conclusion, although the Board will not render an advisory opinion regarding the appropriateness of your accepting a contract with the City for construction work, the Board does believe it is their duty to advise you of the representative restrictions in the Ethics Law.

This opinion is limited to the specific facts described herein. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the question at issue.

If you have any questions regarding this matter, please feel free to contact Patricia Parkin McNamara at (609) 633-6344.

Sincerely,



Barry Skokowski, Sr., Chairman
Local Finance Board

BS/PPM/ri

Enclosure

AC



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS

JANE M. KENNY
Commissioner

RISTINE TODD WHITMAN
Governor

August 19, 1996

Re: Local Government Ethics Law
Advisory Opinion #LFB-96-006
Board Determination

The Local Finance Board (Board) has reviewed your request for an advisory opinion regarding the Local Government Ethics Law. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Law.

You have requested an advisory opinion as to whether or not you may prepare appraisals for ██████████ County, where you are a member of the ██████████ County Board of Taxation. You are also the Tax Assessor for the ██████████ and a Certified Residential Real Estate Appraiser. This would involve work such as preparing lease appraisals and right of way takings. Work done for ██████████ County would derive value through the use of comparable sales, cost approach, and comparable leases. Value will not be derived through the use of assessments. If any of the property owners that were appraised by the requesting agent were to file a tax appeal you would abstain from any action in regard to the appeal. Furthermore, you would abstain even though your client would be the County and not the tax petitioner.

The Board, at its meeting of April 10, 1996, determined that the position of Commissioner of the County Board of Taxation is a State position and not subject to the Local Government Ethics Law. Your position as Tax Assessor in the City of ██████████ does not appear to be related to performing other functions in another county. Therefore, this matter would not be under the Board's jurisdiction.

Page 2
August 19, 1996

In Attorney General Opinion #91-0141, dated November 18, 1991, (copy enclosed) this concern is addressed as follows:

Commissioners of County Boards of Taxation are not "local government officers" pursuant to N.J.S.A. 40A:9-22.3(g). 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.

Thus, you are advised to contact the State Commission on Ethical Standards for an advisory opinion in this regard.

Should you have any questions regarding this matter, please feel free to contact Patricia Parkin McNamara at (609) 292-0479.

Sincerely,



Beth Gates, Chair
Local Finance Board

BG:APC:jyt
Enclosure
1026x



State of New Jersey
 DEPARTMENT OF COMMUNITY AFFAIRS
 101 SOUTH BROAD STREET
 PO Box 803
 TRENTON, NJ 08625-0803

CHRIS CHRISTIE
 Governor

KIM GUADAGNO
 Lt. Governor

RICHARD E. CONSTABLE, III
 Acting Commissioner

July 9, 2012

PERSONAL & CONFIDENTIAL

Re: Local Government Ethics Law
 Advisory Opinion #LFB-12-009

Dear _____:

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law (Law). More specifically, N.J.S.A. 40A:9-22.8 provides as follows:

“A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines.”

Your request indicates that you are currently serving as Mayor in the _____
 The _____ maintains a website at _____ where information regarding local services is provided. The website is paid for by the _____. You have inquired whether the Local Government Ethics Law would prohibit you from adding a link to that website that would allow visitors to the _____ website to visit your personal social media sites. You state that you would express personal and political opinions on any and all topics through the social media outlets. A visitor to the _____ website would be made aware that the social media links would take them away from the _____ page to a separate website. Additionally, the _____ would not incur any costs by linking to or maintaining the social media pages.

The applicable provision of the Local Government Ethics Law is N.J.S.A. 40A:9-22.5(c).

N.J.S.A. 40A:9-22.5(c) provides:

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No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others.

The Local Finance Board considers sharing an elected official's personal social media site as similar to sharing a personal phone number. It is a modern day form of communication.

In light of the circumstances represented in your request for an advisory opinion, it is the opinion of the Local Finance Board that the Local Government Ethics Law would not prohibit you from providing a link on the _____ website to personal social media websites.

The Board's opinion is limited to the specific matter and question as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the matter and question at issue.

Should you have any questions regarding this matter, please feel free to contact Nick Bennett at (609) 292-0479.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Neff', written over a circular stamp or seal.

Thomas H. Neff, Chair
Local Finance Board

THN:nb
AO-12-009.response



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 803
TRENTON, NJ 08625-0803

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

February 27, 2015

PERSONAL AND CONFIDENTIAL

Re: Local Government Ethics Law
Advisory Opinion #LFB-14-020

Dear _____:

The Local Finance Board (Board) has reviewed your request for an advisory opinion. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the Local Government Ethics Law (Law). More specifically, N.J.S.A. 40A:9-22.8 provides as follows:

A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government officer or employee unless the board in directing that the opinion be made public so determines.

You indicate that you are asking for an advisory opinion on your own behalf. You are an elected official in the _____.

■ You have requested an opinion as to whether the Local Government Ethics Law would prohibit you from purchasing a tax lien certificate sold on a tax delinquent property in the same _____.

You have indicated that the tax lien sale may involve a Special Tax Sale, which would expedite the timeframe by which you would be permitted to foreclose on the property. It is understood that the tax sale process is governed by the Tax Sale Law, N.J.S.A. 54:5-1 et seq.

You have also requested an opinion as to whether the Local Government Ethics Law would prohibit you from participating as a bidder in an auction of municipally owned assets when you serve as an elected official in the municipality. It is understood that the sale of municipal assets is governed by N.J.S.A. 40A:12-13 et seq.



The applicable provisions of the Local Government Ethics Law are N.J.S.A. 40A:9-22.5(c):

No local government officer or employee shall use his official position to secure unwarranted privileges or advantages for himself or others.

N.J.S.A. 40A:9-22.5(d):

No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment;

And N.J.S.A. 40A:9-22.5(g):

No local government officer or employee shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he received or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated.

In light of the circumstances presented in your request for an advisory opinion, it is the opinion of the Board that the Local Government Ethics Law would not prohibit you from participating as any other member of the public in either of the matters you present to the Board, so long as you do not receive confidential information related to either process by way of your position on the governing body. The Local Government Ethics Law recognizes that "citizens who are government officers and employees have a right to private interests of a personal, financial and economic nature" (N.J.S.A. 40A:9-22.4).

Please be aware, however, that there remain ways by which you might run afoul of the Local Government Ethics Law. A **Committee member** who is considering bidding on a property up for tax sale or a municipal asset sold at auction must be certain that she does not use or attempt to use her official position to secure unwarranted privileges or advantages for herself in securing the tax lien certificate or municipal asset in question. For example, any attempt to influence the actions of other **officials** concerning the expediting of the tax lien certificate or municipal asset in question would likely constitute a violation of N.J.S.A. 40A:9-22.5(c) if the Committee member then bid on the property.

A **Committee member** who is considering bidding on a tax sale certificate or a municipal asset sold at auction may not act in her official capacity in any matter involving the items. For example, if the certificate or asset were placed up for sale by an official action of the governing body, which includes action taken by that Committee member, this could constitute a direct or indirect personal or financial involvement that might reasonably be expected to impair her objectivity or independence of judgment if the Committee member then showed her interest in the certificate or municipal asset by pursuing its purchase. This official action would likely constitute a violation of N.J.S.A. 40A:9-22.5(d).

Additionally, if a Committee member who is considering bidding on a tax sale certificate or a municipal asset up for auction has information concerning the sale which is not generally available to the members of the public, which she receives or acquires in the course of or by reason of her office or employment, she should not bid on the property as this could constitute a violation of N.J.S.A. 40A:9-22.5(g).

The Board's opinion is limited to the specific matter and question as outlined in your request letter. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the matter and question at issue.

Additionally, the examples provided in this letter are not meant to represent an exhaustive list of the potential Local Government Ethics Law implications that may arise if an elected official were to take part in a tax certificate auction or the sale of municipal assets. Instead, the examples are meant to illustrate the application of the Law.

Should you have any questions regarding this matter, please feel free to contact Nick Bennett at (609) 292-0479.

Sincerely,



Patricia Parkin McNamara
Executive Secretary
Local Finance Board

PPM:nb
AO-14-020