

## Ethics in the Municipal Setting: Real Life Quandaries

*What would you do if...*

Presentation by Ethicist Kim D. Ringler, Esq.

How to navigate through the challenging waters of municipal ethics, local conflicts of interest rules, pertinent laws and personal standards of morality in order to successfully keep your head above water! How to identify what is merely embarrassing, what is unethical, what is illegal and what may be simply contrary to personal morality, and what options are available to respond properly.

The presentation will include a discussion of real life situations and the application of the following authorities to determine how these constraints and guideposts impact decision making by municipal clerks and other municipal employees:

State law: NJSA 40A:9-22.1 et seq. as enacted in 1991 and as amended through December 2015;

State regulations: NJAC 5:35-1.1 et. seq.;

State criminal code: NJSA 2C:27-10 and 11;

Supreme Court Advisory Opinion 697 (2006).

181 N.J.L.J. 536

August 8, 2005

14 N.J.L. 1563

August 8, 2005

Advisory Committee on Professional Ethics

Appointed by the Supreme Court of New Jersey

OPINION 697

### **Conflict of Interest: Concurrent Representation Involving**

#### **Local Public Entities and Private Clients**

This inquiry concerns the propriety of an attorney, whose law partner is either a township zoning board attorney or a housing authority attorney, representing private clients on traffic and disorderly persons matters in that township's municipal court. The inquirer presupposes that "there would be no actual conflict in the course of this representation." We do not agree.

Soon after the creation of the Advisory Committee on Professional Ethics (ACPE) in 1962, we published ACPE Opinion 4, 86 N.J.L.J. 357 (1963). That inquiry concerned a law firm which represented several municipalities and contemplated representing private clients before the boards of adjustment in those municipalities. This situation was found to be improper. We reasoned that an attorney who represents a municipality or any of its agencies "has as his client the entire municipality...", which would include the board of adjustment. We then held that representation of a private client before the municipality's board of adjustment would be *per se* inconsistent with the then Canons of Professional Ethics #6, which expressly forbade acceptance of employment adversely affecting any interest of a client. Considering that the resulting conflict could not be waived by the public client, undertaking representation was impermissible.

A few months later, the Supreme Court issued a Notice to the Bar indicating that attorneys for municipalities or other public agencies may not represent a private client with interests adverse to those of the public entity. Notice to the Bar, 86 N.J.L.J. 713 (1963). The concept of being "adverse to the public entity" includes representation of "a private client before any board, agency, commission, or other

part of the municipality including its governing body.” Matter of ACPE Opinion 621, 128 N.J. 577, 594-595 (1992). We recognize that the Court’s discussion in Opinion 621 was grounded in part at least on the “appearance of impropriety”, a rule which has recently been abolished. Nevertheless, our findings discussed below as to who the client is when representing a municipal agency, leads us to the same conclusions.

It is against this backdrop that we examine the issue at hand. The broad question is whether the proposed representation would be inconsistent with the present Rules of Professional Conduct (RPC) or Rules of Court. RPC 1.7(a)(1) generally precludes an attorney from representing one client adverse to another. New Jersey Court Rule 1:15-3(b) more specifically prohibits “municipal attorneys” from representing private clients in their municipality’s court. The question posed requires that we examine the relationship between the entity represented and the municipality to determine whether counsel for the entity in fact has the municipality as a client for purposes determining the existence of a conflict with the interests of the attorney’s private client.

We have addressed this same basic question many times. Our prior decisions demonstrate that we have already dealt with this subject matter, for example, in connection with attorneys for a local housing authority, Opinion 79, 88 N.J.L.J. 460 (1965) and Opinion 18, 86 N.J.L.J. 734 (1963); a municipal environmental commission, Opinion 374, 100 N.J.L.J. 646 (1977); a local board of health, Opinion 300, 98 N.J.L.J. 126 (1975); a senior citizen housing authority, Opinion 281, 97 N.J.L.J. 362 (1974); an appointed school board, Opinion 137, 91 N.J.L.J. 797 (1968) and Opinion 77, 88 N.J.L.J. 453 (1965); a redevelopment agency, Opinion 123, 91 N.J.L.J. 97 (1968); and a municipal parking authority, Opinion 52, 87 N.J.L.J. 610 (1964). In each of these situations it was determined that the board, body, or authority at-issue was a subordinate instrumentality of their municipal government and that the proposed representation of private clients before or against any other municipal agency was improper.

Specifically, we held in Opinion 79 that “the attorney for a municipal housing authority cannot appear before the municipal court, board of adjustment, planning board, township committee or other municipal bodies in the municipality which is served by the public housing authority.” Our conclusion in Opinion 18, 86 N.J.L.J. 734 (1963) was the same, “[a]n attorney representing a city housing authority has as his client the entire municipality.”

Our views on this issue over the years have not changed. Nor, as stated above, does the elimination of the “appearance of impropriety” rule alter those views, since once the client is determined to be the municipality itself, there would be a concurrent conflict in representing a private client before or against one of its subordinate instrumentalities. RPC 1.7. Counsel representing an adjunct agency of a municipal government must make a choice as to whether they desire to represent the agency and thus preclude the practice by themselves and members of their firms before the

various boards and bodies of the municipal government, or whether they believe it to be more advantageous to decline representation of the agency and represent private clients before the same public bodies. Opinion 374, 100 N.J.L.J. 646 (1977).

To aid practitioners in determining if a particular public body is an adjunct agency of a municipal government, the test is whether the agency is subject to the municipal government's budgetary, membership, or decision-making control. Opinion 292, 97 N.J.L.J. 809 (1974). If it is subject to any of these controls, the body is an instrumentality of that governing entity for purposes of the conflicts addressed in this opinion.

Bodies not subject to such control are autonomous and not considered to be part of the particular municipal government for purposes of conflict of interest analysis. We reached that conclusion with regard to a municipal fire district (municipal fire district more of an autonomous body because its commissioners were elected by ballot and its budget was determined by referendum), Opinion 292, *supra*; and an elected school board, Opinion 41, 87 N.J.L.J. 285 (1964) (elected school board was "clearly autonomous and is not a part of the municipality in which it is located"). The same would be true with respect to a municipal public defender since the public defender does not represent the municipality.

For the reasons stated above, an attorney, law firm, or office associates of that attorney or law firm, representing a municipal body subject to the governing entity's budgetary, membership, or decision-making control, is precluded from representing a private client before (or in a litigated matter against) the governing body, its executive, its legislature, any policy making official in an official capacity, or any office, department, division, bureau, board, commission, or agency, or other body subject to that governing entity's budgetary, membership, or decision making control, and specifically in this case, before the municipal court.

While a similar conclusion may be reached regarding county government (see opinions cited after footnote 2, *infra*), the reasoning of this opinion is not intended to extend to an attorney representing an agency of the State, because the State is "so varied, so multifaceted, so extensive that to regard it as one unitary monolithic employer/client is unrealistic." Matter of ACPE Opinion 621, 128 N.J. 577, 597 (1992).

See, RPC 1.7(a) (2) and (b)(2), (1984). Comment to RPC 1.7, N.J.L.J., July 19, 1984, *supp.* at 3 (Appendix A-2), "to preserve New Jersey's rule that a government agency cannot consent to representation if a conflict of interest exists ..." See also In re Advisory Com. on Prof. Ethics, 162 N.J. 497, 504 (2000). Although the Supreme Court Committee on the Rules of Professional Conduct (the Pollock Commission) recommended elimination of the prohibition of consent by these entities, the Supreme Court concluded that the prohibition, essentially a protective remnant of the appearance of impropriety rule, should be retained. (See, Supreme Court of New Jersey, Administrative Determinations in response to the Report and

Recommendation of the Supreme Court Commission on the Rules of Professional Conduct, September 10, 2003, p. 20,  
<http://home.courts.judiciary.state.nj.us/notices/reports/admin-deter-rpcs.pdf>.)

ACPE decisions can be found on the Internet at  
[www.lawlibrary.rutgers.edu/ethics/search.shtml](http://www.lawlibrary.rutgers.edu/ethics/search.shtml).

We note that there is also a question concerning the applicability of RPC 1.8(k), but we need not reach it in this inquiry because there is a direct conflict prohibited by RPC 1.7.

See R.1:15-3(b).

See R.1:15-5(b).

**2C:27-10 Acceptance or receipt of unlawful benefit by public servant for official behavior.**

5. Acceptance or receipt of unlawful benefit by public servant for official behavior.

a. A public servant commits a crime if, under color of office and in connection with any official act performed or to be performed by the public servant, the public servant directly or indirectly, knowingly solicits, accepts or agrees to accept any benefit, whether the benefit inures to the public servant or another person, to influence the performance of an official duty or to commit a violation of an official duty.

b. A public servant commits a crime if, under color of office and in connection with any official act performed or to be performed by the public servant, the public servant directly or indirectly, knowingly receives any benefit, whether the benefit inures to the public servant or another person, to influence the performance of an official duty or to commit a violation of an official duty.

c. In addition to the definition set forth in N.J.S.2C:27-1, "benefit" as used in this act includes any benefit from or by reason of a contract or agreement for goods, property or services if the contract or agreement is awarded, made or paid by the branch, subdivision, or agency of the government that employs the public servant.

d. The provisions of this section shall not apply to:

(1) Fees prescribed by law to be received by a public servant or any other benefit to which the public servant is otherwise legally entitled if these fees or benefits are received in the manner legally prescribed and not bartered for another benefit to influence the performance of an official duty or to commit a violation of an official duty;

(2) Gifts or other benefits conferred on account of kinship or other personal, professional or business relationship independent of the official status of the recipient if these gifts or benefits are within otherwise legally permissible limits and are not bartered for another benefit to influence the performance of an official duty or to commit a violation of an official duty; or

(3) Trivial benefits the receipt of which involve no risk that the public servant would perform official duties in a biased or partial manner.

e. An offense proscribed by this section is a crime of the second degree. If the benefit solicited, accepted, agreed to be accepted or received is of a value of \$200.00 or less, any offense proscribed by this section is a crime of the third degree.

L.2003,c.255,s.5.

**2C:27-11 Offer of unlawful benefit to public servant for official behavior.**

6. Offer of unlawful benefit to public servant for official behavior.

a. A person commits a crime if the person offers, confers or agrees to confer any benefit, whether the benefit inures to the public servant or another person, to influence a public servant in the performance of an official duty or to commit a violation of an official duty.

b. A person commits a crime if the person, directly or indirectly, confers or agrees to confer any benefit not allowed by law to a public servant.

c. In addition to the definition set forth in N.J.S. 2C:27-1, "benefit" as used in this act includes any benefit from or by reason of a contract or agreement for goods, property or services if the contract or agreement is awarded, made or paid by the branch, subdivision, or agency of the government that employs the public servant.

d. The provisions of this section shall not apply to:

(1) Fees prescribed by law to be received by a public servant or any other benefit to which the public servant is otherwise legally entitled if these fees or benefits are received in the manner legally prescribed and not bartered for another benefit to influence the performance of an official duty or to commit a violation of an official duty;

(2) Gifts or other benefits conferred on account of kinship or other personal, professional or business relationship independent of the official status of the recipient if these gifts or benefits are within otherwise legally permissible limits and are not bartered for another benefit to influence the performance of an official duty or to commit a violation of an official duty; or

(3) Trivial benefits the receipt of which involve no risk that the public servant would perform official duties in a biased or partial manner.

e. (1) An offense proscribed by subsection a. of this section is a crime of the second degree. If the benefit solicited, accepted or agreed to be accepted is of a value of \$200.00 or less, any offense proscribed by subsection a. of this section is a crime of the third degree.

(2) An offense proscribed by subsection b. of this section is a crime of the third degree. If the gift or other benefit is of a value of \$200.00 or less, an offense proscribed by subsection b. of this section is a crime of the fourth degree.

L.2003,c.255,s.6.

**2C:27-12 Crime of corruption of public resources; grading.**

1. a. A person commits the crime of corruption of public resources if, with respect to a public resource which is subject to an obligation to be used for a specified purpose or purposes, the person knowingly uses or makes disposition of that public resource or any portion thereof for an unauthorized purpose.

(1) If the public resource involved is subject to an obligation to be used to perform or facilitate the performance of a governmental function or public service, corruption of public resources constitutes a crime of the first degree if the amount or value of the public resource involved is \$500,000 or more; the offense constitutes a crime of the second degree if the amount or value involved is \$75,000 or more but is less than \$500,000; and the offense constitutes a crime of the third degree if the amount or value involved is less than \$75,000.

(2) If the public resource involved is not subject to an obligation to be used for a purpose to perform or facilitate the performance of a governmental function or public service, corruption of public resources constitutes a crime of the second degree if the amount or value of the public resource involved is \$500,000 or more; the offense constitutes a crime of the third degree if the amount or value involved is \$75,000 or more but is less than \$500,000; and the offense constitutes a crime of the fourth degree if the amount or value involved is less than \$75,000.

b. Except as otherwise provided in section 97 of P.L.1999, c.440 (C.2C:21-34), a person commits a crime if he makes a material representation that is false to a government agency, officer or employee (1) with the purpose to obtain or retain a public resource, or (2) with the purpose to mislead or deceive any person as to the use or disposition of a public resource. This offense constitutes a crime of the second degree if the amount or value of the public resource involved is \$500,000 or more; the offense constitutes a crime of the third degree if the amount or value involved is \$75,000 or more but is less than \$500,000; and the offense constitutes a crime of the fourth degree if the amount or value involved is less than \$75,000.

c. For purposes of this section, "public resource" means any funds or property provided by the government, or a person acting on behalf of the government, which shall include but is not limited to: (1) money or the equivalent of money paid by the government directly or indirectly to or on behalf of a person or his employer; (2) transfer by the government of an asset of value for less than fair market price; (3) fees, costs, rents, insurance or bond premiums, loans, interest rates or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, or forgiven by the government; (4) money loaned by the government that is to be repaid on a contingent basis; (5) money loaned by an entity based upon or in accordance with a guarantee provided by the government; (6) grants awarded by the government or an entity acting on behalf of the government; and (7) credits that are applied by the government against repayment obligations to the government. For purposes of this section, a purpose is unauthorized if it is not the



specified purpose or purposes for which a public resource is obligated to be used, and the government agency having supervision of or jurisdiction over the person or public resource has not given its approval for such use.

d. Each act of corruption of public resources shall constitute an additional, separate and distinct offense, except that the amounts or values of public resources used for an unauthorized purpose in separate acts of corruption of public resources may be aggregated for the purpose of establishing liability pursuant to this section.

e. Proof that a person made a false statement, prepared a false report or if the government agency having supervision of or jurisdiction over the person or public resource required a report to be prepared, failed to prepare a report concerning the conduct that is the subject of the prosecution, shall give rise to an inference that the actor knew that the public resource was used for an unauthorized purpose.

f. Nothing in this act shall preclude an indictment and conviction for any other offense defined by the laws of this State.

g. Nothing in this act shall preclude an assignment judge from dismissing a prosecution under this section if the assignment judge determines, pursuant to N.J.S.2C:2-11, the conduct charged to be a de minimis infraction.

L.2007,c.158.



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

# LOCAL GOVERNMENT ETHICS LAW

New Jersey Statute  
**N.J.S.A. 40A:9-22.1 et seq.**

and

Adopted Rules and Complaint Procedures  
**N.J.A.C. 5:35-1.1 et seq.**

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

(Updated December 2015)



**LOCAL GOVERNMENT ETHICS LAW**  
**N.J.S.A. 40A:9-22.1 et seq.**  
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#### **40A:9-22.1 Local government ethics law; short title**

This act shall be known and may be cited as the “Local Government Ethics Law.”

L. 1991, c. 29, § 1.

#### **40A:9-22.2 Legislative findings and declaration**

The Legislature finds and declares that:

- a. Public office and employment are a public trust;
- b. The vitality and stability of representative democracy depend upon the public’s confidence in the integrity of its elected and appointed representatives;
- c. Whenever the public perceives a conflict between the private interests and the public duties of a government officer or employee, that confidence is imperiled;
- d. Governments have the duty both to provide their citizens with standards by which they may determine whether public duties are being faithfully performed, and to apprise their officers and employees of the behavior which is expected of them while conducting their public duties; and
- e. It is the purpose of this act to provide a method of assuring that standards of ethical conduct and financial disclosure requirements for local government officers and employees shall be clear, consistent, uniform in their application, and enforceable on a Statewide basis, and to provide local officers or employees with advice and information concerning possible conflicts of interest which might arise in the conduct of their public duties.

L. 1991, c. 29, § 2.

#### **40A:12-22.3 Definitions**

As used in this act:

- a. “Board” means the Local Finance Board in the Division of Local Government Services in the Department of Community Affairs;
- b. “Business organization” means any corporation, partnership, firm, enterprise, franchise, association, trust, sole proprietorship, union or other legal entity;
- c. “Governing body” means, in the case of a municipality, the commission, council, board or body, by whatever name it may be known, having charge of the finances of the municipality, and, in the case of a county, the board of chosen freeholders, or, in the

case of a county having adopted the provisions of the “Optional County Charter Law,” P.L.1972, c.154 (C.40:41A-1 et seq.), as defined in the form of government adopted by the county under that act;

d. “Interest” means the ownership or control of more than 10% of the profits, assets or stock of a business organization but shall not include the control of assets in a nonprofit entity or labor union;

e. “Local government agency” means any agency, board, governing body, including the chief executive officer, bureau, division, office, commission or other instrumentality within a county or municipality, and any independent local authority, including any entity created by more than one county or municipality, which performs functions other than of a purely advisory nature, but shall not include a school board;

f. “Local government employee” means any person, whether compensated or not, whether part-time or full-time, employed by or serving on a local government agency who is not a local government officer, but shall not mean any employee of a school district;

g. “Local government officer” means any person whether compensated or not, whether part-time or full-time: (1) elected to any office of a local government agency; (2) serving on a local government agency which has the authority to enact ordinances, approve development applications or grant zoning variances; (3) who is a member of an independent municipal, county or regional authority; or (4) who is a managerial executive employee of a local government agency, as defined in rules and regulations adopted by the Director of the Division of Local Government Services in the Department of Community Affairs pursuant to the “Administrative Procedure Act,” P.L. 1968, c. 410 (C.52:14B-1 et seq.), but shall not mean any employee of a school district or member of a school board;

h. “Local government officer or employee” means a local government officer or a local government employee;

i. “Member of immediate family” means the spouse or dependent child of a local government officer or employee residing in the same household.

L. 1991, c. 29, § 3. Amended by L. 2015, c. 95, § 21, eff. Aug. 10, 2015.

#### **40A:9-22.4 Local Finance Board; jurisdiction**

The Local Finance Board in the Division of Local Government Services in the Department of Community Affairs shall have jurisdiction to govern and guide the conduct of local government officers or employees regarding violations of the provisions of this act who are not otherwise regulated by a county or municipal code of ethics promulgated by a county or municipal ethics board in accordance with the provisions of this act. Local government officers or employees serving a local government agency created by more than one county or municipality and officers

or employees of county colleges established pursuant to N.J.S. 18A:64A-1 et seq. shall be under the jurisdiction of the board. 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.

L. 1991, c. 29, §4. Amended by L. 1995, c. 21.

#### **40A:9-22.5 Code of ethics for local government officers or employees under jurisdiction of Local Finance Board**

Local government officers or employees under the jurisdiction of the Local Finance Board shall comply with the following provisions:

- 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;
- b. No independent local authority shall, for a period of one year next subsequent to the termination of office of a member of that authority:
  - (1) award any contract which is not publicly bid to a former member of that authority;
  - (2) allow a former member of that authority to represent, appear for or negotiate on behalf of any other party before that authority; or
  - (3) employ for compensation, except pursuant to open competitive examination in accordance with Title 11A of the New Jersey Statutes and the rules and regulations promulgated pursuant thereto, any former member of that authority.

The restrictions contained in this subsection shall also apply to any business organization in which the former authority member holds an interest.

- 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;
- 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;

f. No local government officer or employee, member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the local government officer has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the local government officer in the discharge of his official duties;

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 with which he is associated;

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;

i. 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;

j. No elected local government officer shall be prohibited from making an inquiry for information on behalf of a constituent, if no fee, reward or other thing of value is promised to, given to or accepted by the officer or a member of his immediate family, whether directly or indirectly, in return therefor; and

k. Nothing shall prohibit any local government officer or employee, or members of his immediate family, from representing himself, or themselves, in negotiations or proceedings concerning his, or their, own interests.

L. 1991, c. 29, § 5.

#### **40A:9-22.6 Financial disclosure statement**

a. Local government officers shall annually file a financial disclosure statement. All financial disclosure statements filed pursuant to this act shall include the following information which shall specify, where applicable, the name and address of each source of income and the local government officer's job title:

(1) Each source of income, earned or unearned, exceeding \$2,000 received by the local government officer or a member of his immediate family during the preceding calendar year. Individual client fees, customer receipts or commissions on transactions received through a business organization need not be separately reported as sources of income. If a publicly traded security is the source of income, the security need not be reported unless the local government officer or member of his immediate family has an interest in the business organization;

(2) Each source of fees and honorariums having an aggregate amount exceeding \$250 from any single source for personal appearances, speeches or writings received by the local government officer or a member of his immediate family during the preceding calendar year;

(3) Each source of gifts, reimbursements or prepaid expenses having an aggregate value exceeding \$400 from any single source, excluding relatives, received by the local government officer or a member of his immediate family during the preceding calendar year;

(4) The name and address of all business organizations in which the local government officer or a member of his immediate family had an interest during the preceding calendar year; and

(5) The address and brief description of all real property in the State in which the local government officer or a member of his immediate family held an interest during the preceding calendar year.

b. The Local Finance Board shall prescribe a financial disclosure statement form for filing purposes. For counties and municipalities which have not established ethics boards, the board shall transmit sufficient copies of the forms to the municipal clerk in each municipality and the county clerk in each county for filing in accordance with this act. The municipal clerk shall make the forms available to the local government officers serving the municipality. The county clerk shall make the forms available to the local government officers serving the county.



For counties and municipalities which have established ethics boards, the Local Finance Board shall transmit sufficient copies of the forms to the ethics boards for filing in accordance with this act. The ethics boards shall make the forms available to the local government officers within their jurisdiction.

For local government officers serving the municipality, the original statement shall be filed with the municipal clerk in the municipality in which the local government officer serves. For local government officers serving the county, the original statement shall be filed with the county clerk in the county in which the local government officer serves. A copy of the statement shall be filed with the board. In counties or municipalities which have established ethics boards a copy of the statement shall also be filed with the ethics board having jurisdiction over the local government officer. Local government officers shall file the initial financial disclosure statement within 90 days following the effective date of this act. Thereafter, statements shall be filed on or before April 30th each year, except that each local government officer shall file a financial disclosure statement within 30 days of taking office.

c. All financial disclosure statements filed shall be public records.

d. The Division of Local Government Services in the Department of Community Affairs may establish an electronic filing system for financial disclosure statements required to be filed pursuant to this section.

L. 1991, c. 29, § 6, eff. May 21, 1991. Amended by L. 2008, c. 72, § 1, eff. Sept. 6, 2008. Amended by L. 2015, c. 95; § 22, eff. Aug. 10, 2015.

#### **40A:9-22.7 Powers of Local Finance Board**

With respect to its responsibilities for the implementation of the provisions of this act, the Local Finance Board shall have the following powers:

- a. To initiate, receive, hear and review complaints and hold hearings with regard to possible violations of this act;
- b. To issue subpoenas for the production of documents and the attendance of witnesses with respect to its investigation of any complaint or to the holding of a hearing;
- c. To hear and determine any appeal of a decision made by a county or municipal ethics board;
- d. To forward to the county prosecutor or the Attorney General or other governmental body any information concerning violations of this act which may become the subject of criminal prosecution or which may warrant the institution of other legal proceedings by the Attorney General;

- e. To render advisory opinions as to whether a given set of facts and circumstances would constitute a violation of this act;
- f. To enforce the provisions of this act and to impose penalties for the violation thereof as are authorized by this act; and
- g. To adopt rules and regulations pursuant to the “Administrative Procedure Act,” P.L. 1968, c.410 (C.52:14B-1 et seq.) and to do other things as are necessary to implement the purposes of this act.

L. 1991, c. 29, § 7.

#### **40A:9-22.8 Advisory opinions of Local Finance Board**

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 all 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.

L. 1991, c. 29, § 8.

#### **40A:9-22.9 Complaints to Local Finance Board; notice; hearing; decision**

The Local Finance Board, upon receipt of a signed written complaint by any person alleging that the conduct of any local government officer or employee, not regulated by a county or municipal code of ethics, is in conflict with the provisions of this act, shall acknowledge receipt of the complaint within 30 days of receipt and initiate an investigation concerning the facts and circumstances set forth in the complaint. The board shall make a determination as to whether the complaint is within its jurisdiction or frivolous or without any reasonable factual basis. If the board shall conclude that the complaint is outside its jurisdiction, frivolous or without factual basis, it shall reduce that conclusion to writing and shall transmit a copy thereof to the complainant and to the local government officer or employee against whom the complaint was filed. Otherwise the board shall notify the local government officer or employee against whom the complaint was filed of the nature of the complaint and the facts and circumstances set forth therein. The officer or employee shall have the opportunity to present the board with any statement or information concerning the complaint which he wishes. Thereafter, if the board determines that a reasonable doubt exists as to whether the local government officer or employee is in conflict with the provisions of this act, the board shall conduct a hearing in the manner prescribed by section 12 of this act, concerning the possible violation and any other facts and circumstances which may have come to the attention of the board with respect to the conduct of the local government officer or employee. The board shall render a decision as to whether the conduct of the officer or employee is in conflict with the provisions of this act. This decision

shall be made by no less than two-thirds of all members of the board. If the board determines that the officer or employee is in conflict with the provisions of this act, it may impose any penalties which it believes appropriate within the limitations of this act. A final decision of the board may be appealed in the same manner as any other final State agency decision.

L. 1991, c. 29, § 9.

#### **40A:9-22.10 Penalties**

a. An appointed local government officer or employee found guilty by the Local Finance Board or a county or municipal ethics board of the violation of any provision of P.L. 1991, c. 29 (C.40A:9-22.1 et seq.) or of any code of ethics in effect pursuant to P.L., c. 29 (C.40A:9-22.1 et seq.), shall be fined not less than \$100.00 nor more than \$500.00, which penalty may be collected in a summary proceeding pursuant to “The Penalty Enforcement Law of 1999,” P.L. 1999, c. 274 (N.J.S.2A:58-1 et seq.). The board or a county or municipal ethics board shall report its findings to the office or agency having the power of removal or discipline of the appointed local government officer or employee and may recommend that further disciplinary action be taken.

b. An elected local government officer or employee found guilty by the Local Finance Board or a county or municipal ethics board of the violation of any provision of P.L. 1991, c. 29 (C.40A:9-22.1 et seq.) or of any code of ethics in effect pursuant to P.L. 1991, c. 29 (C.40A:9-22.1 et seq.), shall be fined not less than \$100.00 nor more than \$500.00, which penalty may be collected in a summary proceeding pursuant to “The Penalty Enforcement Law of 1999,” P.L. 1999, c. 274 (N.J.S.2A:58-1 et seq.).

c. The remedies provided herein are in addition to all other criminal and civil remedies provided under the law.

L. 1991, c. 29, § 10, eff. May 21, 1991. Amended by L. 1999, c. 440; § 101, eff. April 17, 2000.

#### **40A:9-22.11 Disciplinary action**

The finding by the Local Finance Board or a county or municipal ethics board that an appointed local government officer or employee is guilty of the violation of the provisions of this act, or of any code of ethics in effect pursuant to this act, shall be sufficient cause for his removal, suspension, demotion or other disciplinary action by the officer or agency having the power of removal or discipline. When a person who is in the career service is charged with violating the provisions of this act or any code of ethics in effect pursuant to this act, the procedure leading to removal, suspension, demotion or other disciplinary action shall be governed by any applicable procedures of Title 11A of the New Jersey Statutes and the rules promulgated pursuant thereto.

L. 1991,c. 29, §11.

#### **40A:9-22.12 Rules and procedures applicable to hearings**

All hearings required pursuant to this act shall be conducted in conformity with the rules and procedures, insofar as they may be applicable, provided for hearings by a State agency in contested cases under the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.).

L. 1991, c. 29, § 12.

#### **40A:9-22.13 County ethics boards; members; terms; compensation**

a. Each county of the State governed under the provisions of P.L.1972, c.154 (C.40:41A-1 et seq.) may, by ordinance, and the remaining counties may, by resolution establish a county ethics board consisting of six members who are residents of the county, at least two of whom shall be public members. The members of the ethics board shall be appointed by the governing body of the county and no more than one of whom shall be from the same municipality. The members shall be chosen by virtue of their known and consistent reputation for integrity and their knowledge of local government affairs. No more than three members of the ethics board shall be of the same political party.

b. The members of the county ethics board shall annually elect a chairman from among the membership.

c. The members shall serve for a term of five years; except that of the members initially appointed, two of the public members shall be appointed to serve for a term of five years, one member shall be appointed to serve for a term of four years, and the remaining members shall be appointed to serve for a term of three years. Each member shall serve until his successor has been appointed and qualified. Any vacancy occurring in the membership of the ethics board shall be filled in the same manner as the original appointment for the unexpired term.

d. Members of the ethics board shall serve without compensation but shall be reimbursed by the county for necessary expenses incurred in the performance of their duties under this act.

L. 1991, c. 29, § 13.

#### **40A:9-22.14 County ethics board; office; expenses; employees**

a. The governing body of the county shall provide the county ethics board with offices for the conduct of its business and the preservation of its records, and shall supply equipment and supplies as may be necessary.

b. All necessary expenses incurred by the county ethics board and its members shall be paid, upon certification of the chairman, by the county treasurer within the limits of funds appropriated by the county governing body by annual or emergency appropriations for those purposes.

c. The county ethics board may appoint employees, including independent counsel, and clerical staff as are necessary to carry out the provisions of this act within the limits of funds appropriated by the county governing body for those purposes.

L. 1991,c. 29, §14.

#### **40A:9-22.15 County code of ethics; promulgation; approval**

Within 90 days after the establishment of a county ethics board, that ethics board shall promulgate, by resolution, a county code of ethics for all local government officers and employees serving the county. Local government officers and employees serving a county independent authority shall be deemed to be serving the county for purposes of this act.

The county code of ethics so promulgated shall be either identical to the provisions set forth in section 5 of this act or more restrictive, but shall not be less restrictive. Within 15 days following the promulgation thereof, the county code of ethics, and a notice of the date of the public hearing to be held thereon, shall be published in at least one newspaper circulating within the county and shall be distributed to the county clerk and to the heads of the local government agencies serving the county for circulation among the local government officers and employees serving the county. The county ethics board shall hold a public hearing on the county code of ethics not less than 30 days following its promulgation at which any local government officer or employee serving the county and any other person wishing to be heard shall be permitted to testify. As a result of the hearing, the ethics board may amend or supplement the county code of ethics as it deems necessary. If the county code of ethics is not identical to the provisions set forth in section 5 of this act, the county ethics board shall thereafter submit the county code of ethics to the Local Finance Board for approval. The board shall approve or disapprove a county code of ethics within 60 days following receipt. If the board fails to act within that period, the county code of ethics shall be deemed approved. A county code of ethics requiring board approval shall take effect for all local government officers and employees serving the county 60 days after approval by the board. A county code of ethics identical to the provisions set forth in section 5 of this act shall take effect 10 days after the public hearing thereon. The county ethics board shall forward a copy of the county code of ethics to the county clerk and shall make copies of the county code of ethics available to local government officers and employees serving the county.

L. 1991,c. 29, § 15.

#### **40A:9-22.16 Powers of county ethics board**

A county ethics board shall have the following powers:

- a. To initiate, receive, hear and review complaints and hold hearings with regard to possible violations of the county code of ethics or financial disclosure requirements by local government officers or employees serving the county;

- b. To issue subpoenas for the production of documents and the attendance of witnesses with respect to its investigation of any complaint or to the holding of a hearing;
- c. To forward to the county prosecutor or the Attorney General or other governmental body any information concerning violations of the county code of ethics or financial disclosure requirements by local government officers or employees serving the county which may become the subject of criminal prosecution or which may warrant the institution of other legal proceedings by the Attorney General;
- d. To render advisory opinions to local government officers or employees serving the county as to whether a given set of facts and circumstances would constitute a violation of any provision of the county code of ethics or financial disclosure requirements;
- e. To enforce the provisions of the county code of ethics and financial disclosure requirements with regard to local government officers or employees serving the county and to impose penalties for the violation thereof as are authorized by this act; and
- f. To adopt rules and regulations and to do other things as are necessary to implement the purposes of this act.

L. 1991, c. 29, §16.

#### **40A:9-22.17 Advisory opinions of county ethics board**

A local government officer or employee serving the county may request and obtain from the county ethics board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the county code of ethics or any financial disclosure requirements. Advisory opinions of the county ethics board shall not be made public, except when the ethics board by the vote of two-thirds of all 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 ethics board in directing that the opinion be made public so determines.

L. 1991, c. 29, § 17.

#### **40A:9-22.18 Complaints to county ethics board; notice; hearing; decision**

The county ethics board, upon receipt of a signed written complaint by any person alleging that the conduct of any local government officer or employee serving the county is in conflict with the county code of ethics or any financial disclosure requirements shall acknowledge receipt of the complaint within 30 days of receipt and initiate an investigation concerning the facts and circumstances set forth in the complaint. The ethics board shall make a determination as to whether the complaint is within its jurisdiction or frivolous or without any reasonable factual basis. If the ethics board shall conclude that the complaint is outside its jurisdiction, frivolous or without factual basis, it shall reduce that conclusion to writing and shall transmit a copy thereof

to the complainant and to the local government officer or employee against whom the complaint was filed. Otherwise the ethics board shall notify the local government officer or employee against whom the complaint was filed of the nature of the complaint and the facts and circumstances set forth therein. The officer or employee shall have the opportunity to present the ethics board with any statement or information concerning the complaint which he wishes. Thereafter, if the ethics board determines that a reasonable doubt exists as to whether the local government officer or employee is in conflict with the county code of ethics or any financial disclosure requirements, it shall conduct a hearing in the manner prescribed by section 12 of this act, concerning the possible violation and any other facts and circumstances which may have come to its attention with respect to the conduct of the local government officer or employee. The ethics board shall render a decision as to whether the conduct of the officer or employee is in conflict with the county code of ethics or any financial disclosure requirements. This decision shall be made by no less than two-thirds of all members of the ethics board. If the ethics board determines that the officer or employee is in conflict with the code or any financial disclosure requirements, it may impose any penalties which it believes appropriate within the limitations of this act. A final decision of the ethics board may be appealed to the Local Finance Board within 30 days of the decision.

L. 1991, c. 29, §18.

#### **40A:9-22.19 Municipal ethics board; members; terms; compensation**

a. Each municipality of the State may, by ordinance, establish a municipal ethics board consisting of six members who are residents of the municipality, at least two of whom shall be public members. The members of the ethics board shall be appointed by the governing body of the municipality. The members shall be chosen by virtue of their known and consistent reputation for integrity and their knowledge of local government affairs. No more than three members of the ethics board shall be of the same political party.

b. The members of the municipal ethics board shall annually elect a chairman from among the membership.

c. The members shall serve for a term of five years; except that of the members initially appointed, two of the public members shall be appointed to serve for a term of five years, one member shall be appointed to serve for a term of four years, and the remaining members shall be appointed to serve for a term of three years. Each member shall serve until his successor has been appointed and qualified. Any vacancy occurring in the membership of the ethics board shall be filled in the same manner as the original appointment for the unexpired term.

d. Members of the ethics board shall serve without compensation but shall be reimbursed by the municipality for necessary expenses incurred in the performance of their duties under this act.

L. 1991, c. 29, §19.

#### **40A:9-22.20 Municipal ethics board; office; expenses; employees**

- a. The governing body of the municipality shall provide the municipal ethics board with offices for the conduct of its business and the preservation of its records, and shall supply equipment and supplies as may be necessary.
- b. All necessary expenses incurred by the municipal ethics board and its members shall be paid, upon certification of the chairman, by the municipal treasurer within the limits of funds appropriated by the municipal governing body by annual or emergency appropriations for those purposes.
- c. The municipal ethics board may appoint employees, including independent counsel, and clerical staff as are necessary to carry out the provisions of this act within the limits of funds appropriated by the municipal governing body for those purposes.

L. 1991, c. 29, § 20.

#### **40A:9-22.21 Municipal code of ethics; promulgation; approval**

Within 90 days after the establishment of a municipal ethics board, that ethics board shall promulgate by resolution a municipal code of ethics for all local government officers and employees serving the municipality. Local government officers and employees serving a municipal independent authority shall be deemed to be serving the municipality for purposes of this act.

The municipal code of ethics so promulgated shall be either identical to the provisions set forth in section 5 of this act or more restrictive, but shall not be less restrictive. Within 15 days following the promulgation thereof, the municipal code of ethics, and a notice of the date of the public hearing to be held thereon, shall be published in at least one newspaper circulating within the municipality and shall be distributed to the municipal clerk and to the heads of the local government agencies serving the municipality for circulation among the local government officers and employees serving the municipality. The municipal ethics board shall hold a public hearing on the municipal code of ethics not less than 30 days following its promulgation at which any local government officer or employee serving the municipality and any other person wishing to be heard shall be permitted to testify. As a result of the hearing, the ethics board may amend or supplement the municipal code of ethics as it deems necessary. If the municipal code of ethics is not identical to the provisions set forth in section 5 of this act, the municipal ethics board shall thereafter submit the municipal code of ethics to the Local Finance Board for approval. The board shall approve or disapprove a municipal code of ethics within 60 days following receipt. If the board fails to act within that period, the municipal code of ethics shall be deemed approved. A municipal code of ethics requiring board approval shall take effect for all local government officers and employees serving the municipality 60 days after approval by the board. A municipal code of ethics identical to the provisions set forth in section 5 of this act shall take effect 10 days after the public hearing held thereon. The municipal ethics board shall forward a copy of the municipal code of ethics to the municipal clerk and shall make copies of the



municipal code of ethics available to local government officers and employees serving the municipality.

L. 1991, c. 29, § 21.

#### **40A:9-22.22 Powers of municipal ethics board**

A municipal ethics board shall have the following powers:

- a. To initiate, receive, hear and review complaints and hold hearings with regard to possible violations of the municipal code of ethics or financial disclosure requirements by local government officers or employees serving the municipality;
- b. To issue subpoenas for the production of documents and the attendance of witnesses with respect to its investigation of any complaint or to the holding of a hearing;
- c. To forward to the county prosecutor or the Attorney General or other governmental body any information concerning violations of the municipal code of ethics or financial disclosure requirements by local government officers or employees serving the municipality which may become the subject of criminal prosecution or which may warrant the institution of other legal proceedings by the Attorney General;
- d. To render advisory opinions to local government officers or employees serving the municipality as to whether a given set of facts and circumstances would constitute a violation of any provision of the municipal code of ethics or financial disclosure requirements;
- e. To enforce the provisions of the municipal code of ethics and financial disclosure requirements with regard to local government officers or employees serving the municipality and to impose penalties for the violation thereof as are authorized by this act; and
- f. To adopt rules and regulations and to do other things as are necessary to implement the purposes of this act.

L. 1991, c. 29, §22.

#### **40A:9-22.23 Advisory opinions of municipal ethics board**

A local government officer or employee serving the municipality may request and obtain from the municipal ethics board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the municipal code of ethics or any financial disclosure requirements. Advisory opinions of the municipal ethics board shall not be made public, except when the ethics board by the vote of two-thirds of all 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 ethics board in directing that the opinion be made public so determines.

L. 1991, c. 29, § 23.

#### **40A:9-22.24                   Complaints to municipal ethics board; notice; hearing; decision**

The municipal ethics board, upon receipt of a signed written complaint by any person alleging that the conduct of any local government officer or employee serving the municipality is in conflict with the municipal code of ethics or financial disclosure requirements, shall acknowledge receipt of the complaint within 30 days of receipt and initiate an investigation concerning the facts and circumstances set forth in the complaint. The ethics board shall make a determination as to whether the complaint is within its jurisdiction or frivolous or without any reasonable factual basis. If the ethics board shall conclude that the complaint is outside its jurisdiction, frivolous or without factual basis, it shall reduce that conclusion to writing and shall transmit a copy thereof to the complainant and to the local government officer or employee against whom the complaint was filed. Otherwise the ethics board shall notify the local government officer or employee against whom the complaint was filed of the nature of the complaint and the facts and circumstances set forth therein. The officer or employee shall have the opportunity to present the ethics board with any statement or information concerning the complaint which he wishes. Thereafter, if the ethics board determines that a reasonable doubt exists as to whether the local government officer or employee is in conflict with the municipal code of ethics or any financial disclosure requirements, it shall conduct a hearing in the manner prescribed by section 12 of this act, concerning the possible violation and any other facts and circumstances which may have come to its attention with respect to the conduct of the local government officer or employee. The ethics board shall render a decision as to whether the conduct of the officer or employee is in conflict with the municipal code of ethics or any financial disclosure requirements. This decision shall be made by no less than two-thirds of all members of the ethics board.

If the ethics board determines that the officer or employee is in conflict with the code or any financial disclosure requirements, it may impose any penalties, which it believes, appropriate within the limitations of this act. A final decision of the ethics board may be appealed to the Local Finance Board within 30 days of the decision.

L. 1991, c. 29, § 24.

#### **40A:9-22.25                   Preservation of records**

All statements, complaints, requests or other written materials filed pursuant to this act, and any rulings, opinions, judgments, transcripts or other official papers prepared pursuant to this act shall be preserved for a period of at least five years from the date of filing or preparation, as the case may be.

L. 1991, c. 29, § 25.

**ADOPTED RULES AND COMPLAINT PROCEDURES**  
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### **5:35-1.1 Complaints; procedure**

- (a) Every complaint alleging that a local government officer or employee, who is not regulated by a county or municipal code of ethics, has violated the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq., shall be in writing and signed by the complainant. However, the Local Finance Board may upon its own initiative initiate a complaint against a local government employee or officer, in which case the summary of the complaint shall be contained in the Board's minutes and the complaint shall proceed, where applicable, in accordance with this subchapter or be transmitted to the appropriate county or municipal ethics board.
- (b) Complaints shall:
  - 1. State the point of the Local Government Ethics Law alleged to be violated;
  - 2. State the name(s) and title(s) of the parties involved in the action and against whom the complaint is filed;
  - 3. Set forth in detail the pertinent facts surrounding the alleged violative action;
  - 4. Indicate whether the complaint concerns the complainant in any way and what, if any, relationship the complainant has to the subject of the complaint; and
  - 5. Indicate any other action previously taken in an attempt to resolve the issue and indicate whether the issue is the subject of pending litigation elsewhere.
- (c) The Board shall not process a complaint on a matter which is pending in a court of law or administrative agency of the State.
- (d) The Board's staff shall acknowledge receipt of the complaint within 30 days of receipt of the complaint and commence a preliminary investigation as to whether the complaint is within the Board's jurisdiction or frivolous or without any reasonable factual basis.
- (e) Upon completion of the preliminary investigation, the Board shall make a determination as to whether the complaint is outside its jurisdiction or frivolous or without any reasonable factual basis.
  - 1. If the Board concludes that the complaint is outside its jurisdiction, frivolous or without any reasonable factual basis, the Board's staff shall advise the complainant and the local government employee or official, who is the subject of the complaint, in writing of the Board's conclusion.
  - 2. If the Board concludes that the complaint is within its jurisdiction, not frivolous, and having a reasonable factual basis, the Board shall direct a further investigation to be conducted by the Board's staff.

- (f) The Board's staff in conducting the investigation shall notify the local government employee or officer, who is the subject of the complaint, of the nature of the complaint and the facts and circumstances surrounding the complaint.
1. The local government employee or officer shall have the opportunity to present to the Board's staff any statements or other information concerning the complaint he or she wishes. Such statements or information shall be presented to the Board within 30 days of receipt of notification. Upon written application, the Board or its staff may extend the time for filing such statement.
  2. The Board's staff shall obtain any further information or statements from any person with relevant information or from any other source, necessary to conduct the investigation.
- (g) At the conclusion of the investigation, the Board's staff shall present to the Board the results of its investigation, which shall include any statements or information received from the local government employee or officer, who is the subject of the complaint, and from any person or source with relevant information. The Board shall consider the matter based on the documents submitted to the Board's staff or obtained by the Board's staff. However, the Board in its discretion may direct the complainant, the local government employee or officer, who is the subject of the complaint, or any other person with relevant information to appear before the Board or to provide to the Board any additional information. The local government employee or officer who is the subject of the complaint may request to appear before the Board. However, such appearance is not required, unless directed by the Board.
- (h) If the Board determines, based upon the results of the investigation, that no violation of the Local Government Ethics Law has been committed by the local government employee or officer, the Board shall issue a Notice of Dismissal to the individual and provide a copy to the complainant.
- (i) If the Board determines, based upon the results of the investigation, by a two-thirds vote that a violation of the Local Government Ethics Law has been committed by the local government employee or officer, the Board shall issue a Notice of Violation to the individual containing the nature of the violation, assessing a penalty, and advising the individual of his or her opportunity to request an administrative hearing.
1. The Notice of Violation shall be transmitted to the local government employee or officer by regular and certified mail or by personal service.
  2. The local government employee or officer, within 30 days of receipt of the letter, may request an administrative hearing to contest the Notice of Violation. Any request for an administrative hearing must be filed in the Board's office within 30 days of the receipt of the Notice of Violation by the local government employee

or officer. The Board in its sole discretion may extend the time for requesting an administrative hearing for any reason it deems appropriate.

3. If an administrative hearing is not requested or if not timely filed by the local government employee or officer, the Order shall be deemed the Final Decision of the Board.
- (j) Any administrative hearing shall be conducted in conformity with the rules and procedure, insofar as they may be applicable, of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.
1. The Board shall determine whether it will conduct the administrative hearing or whether to transmit the matter to the Office of Administrative Law as a “contested case” for the rendering of an initial decision.
  2. If the Board transmits the matter to the Office of Administrative Law as a “contested case,” the Board shall review the initial decision and render a final decision. However, any finding that a violation of the Local Government Ethics Law has been committed by the local government employee or officer, requires a two-thirds vote of the Board.

#### **5:35-1.2 Confidentiality**

- (a) Any complaints, statements, information, or documents obtained or prepared by the Board staff or the Board are deemed confidential and not subject to public disclosure during the course of the preliminary investigation or investigation to determine whether a violation of the Local Government Ethics Law has occurred, except as necessary for the Board’s staff or the Board to conduct the preliminary investigation or investigation.
- (b) The Board’s discussion regarding a preliminary investigation or investigation shall be in executive session. However, any vote by the Board regarding a preliminary investigation or investigation shall be in public session. In public session, the complaint shall only be identified by a docket number, determined by the Board’s staff.
- (c) The Notice, the complaint and allied statements or information obtained by the Board’s staff during the course of the preliminary investigation or investigation are subject to public disclosure 30 days after mailing a Notice of Dismissal, pursuant to N.J.A.C. 5:351.1(h), or a Notice of Violation, pursuant to N.J.A.C. 5:35-1.1(i).

#### **5:35-1.3 Local ethics boards; complaint conflicts**

- (a) A municipal or county ethics board, established pursuant to the Local Government Ethics Law, which has before it a complaint against a local government employee or officer regulated by its code of ethics and which is unable to act on the complaint because a

majority of the board has a conflict of interest or is otherwise precluded by ethical consideration from rendering a decision in a matter, shall request the Local Finance Board to assume original jurisdiction.

1. Such request shall be in writing signed by the chairperson of the county or municipal ethics board or its legal counsel and detail the exact nature of the complaint and the exact nature of the county or municipal board's inability to render a decision.
  2. Attached to the request shall be the complaint, the county or municipal code of ethics, and all relevant documents and information obtained by the county or municipal ethics board during the course of the investigation.
  3. The county or municipal ethics board shall advise, in writing, the complainant and the local government employee or officer, who is the subject of the complaint, of the request. A copy of which shall be provided to the Local Finance Board.
- (b) The Board shall review the request and determine whether the county or municipal ethics board is precluded from rendering a decision in the matter.
1. If the Board determines that the county or municipal ethics board is precluded from rendering a decision, the Board shall assume original jurisdiction over the matter and advise the county or municipal board of the determination. Thereafter, the complaint shall proceed in accordance with N.J.A.C. 5:35-1.1. However, the Board shall only consider whether a violation of the State's code of ethics has occurred.
  2. If the Board determines that the county or municipal ethics board is not precluded from rendering a decision, the Board shall advise the county or municipal ethics board of the determination. Thereafter, the county or municipal ethics board shall render a final decision in the matter in accordance with the Local Government Ethics Law.
  3. The county or municipal ethics board shall advise the complainant and the local government employee or officer, who is the subject of the complaint, of the Board's determination.

#### **5:35-1.4 Local ethics boards; appeals of complaints**

- (a) A final decision of a county or municipal ethics board, established pursuant to the Local Government Ethics Law, on a complaint may be appealed by the complainant or the local government employee or officer, who is the subject of the complaint, to the Local Finance Board within 30 days of the decision.

- (b) The appeal shall be in writing and include the grounds for appeal and attach the complaint and the decision of the county or municipal ethics boards. A copy of the appeal and allied papers shall be filed with the appropriate county or municipal ethics board.
- (c) Upon receipt of the appeal, the county or municipal ethics board shall transmit to the Local Finance Board the board's complete file in the matter, which shall include any transcripts or tapes of the hearing, and a copy of the municipal or county code of ethics.
- (d) The Board in its discretion may submit the appeal to the Office of Administrative Law as a "contested case" for the rendering of an initial decision in accordance with the Administrative Procedure Act and these rules. The Board shall review the initial decision and render a final decision.
- (e) If the record below is deemed sufficiently complete by the Board or an Administrative Law Judge, the Board, or an Administrative Law Judge, may consider the matter solely on the record below. If the record is not deemed sufficiently complete by the Board, or an Administrative Law Judge, the Board, or an Administrative Law Judge, in its discretion may direct the submission of additional evidence, testimony, or oral argument to complete the record.
- (f) Any final decision of the Board finding that a local government employee or officer has violated the Local Government Ethics Law requires a two-thirds vote of the Board.
- (g) The final decision of the Board shall be provided to the complainant, the local government employee or officer who is the subject of the complaint, and the appropriate county or municipal ethics board.

**5:35-1.5      Advisory opinions**

- (a) A local government employee or officer not regulated by a county or municipal code of ethics may request from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct constitutes a violation of the Local Government Ethics Law.
  1. The request shall be in writing signed by the local government employee or officer who is the subject of the request or his or her attorney.
  2. The request shall set out the factual situation in detail, the specific question(s) of the requester, and whether there is any pending litigation or action relevant to the facts of the inquiry. The Board will not process an advisory opinion request on a matter pending in a court of law or an administrative agency of the State.
  3. The Board will not consider a request for an advisory opinion regarding activity or conduct that has already occurred, unless the requester certifies that the activity or conduct is likely to be of a continuing nature.



4. The Board will not consider a request for an advisory opinion from a local government officer or employee, or his or her attorney, who is not the subject of the proposed activity or conduct.
- (b) The Board's staff shall acknowledge receipt of the request within 30 days of receipt of the request.
  - (c) The Board's staff shall review and present to the Board requests for advisory opinions that comply with N.J.A.C. 5:35-1.5(a).
  - (d) The Board shall determine whether in its opinion the proposed activity or conduct constitutes a violation of the Local Government Ethics Law. The Board's determination shall be reduced to writing and provided to the requester.
  - (e) Advisory opinions shall not be made public unless two-thirds of the Board directs that the opinion be made public. Public advisory opinions shall not disclose the requester's identity, unless the Board in making the advisory opinion public also determines by a two-thirds vote to disclose the requester's identity. Discussions of advisory opinions by the Board shall be conducted in executive session, unless the requester requests that the Board's discussion be in the public session of the Board's meeting.
  - (f) Unless the Board determines that the advisory opinion be made public, the request for the advisory opinion and all allied documents or information obtained or prepared by the Board's staff shall remain confidential and not subject to public disclosure.
  - (g) If the request for the advisory opinion reports conduct or activity that has already occurred, the Board in its discretion may initiate a complaint against the requester if the Board believes that a violation of the Local Government Ethics Law may have occurred.

#### **5:35-1.6 Local ethics boards; advisory opinion conflicts**

- (a) A municipal or county ethics board, established pursuant to the Local Government Ethics Law, which has before it a request for an advisory opinion from a local government employee or officer regulated by its code of ethics and which is unable to act on the request because a majority of the board has a conflict of interest or is otherwise precluded by ethical considerations from rendering an advisory opinion, shall request the Local Finance Board to assume original jurisdiction.
- (b) The procedures, to the extent applicable, contained in N.J.A.C. 5:35-1.5 shall be followed for making the request and for determining whether the Board will assume jurisdiction or direct the county or municipal ethics board to consider the advisory opinion. If the Board assumes jurisdiction of the matter, the Board will only issue an advisory opinion as to whether the proposed conduct or action constitutes a violation of the State's code of ethics.