

Ethics for the Zoning Officer

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Local Government Ethics Law

For more than a decade, concerns have been running high about ethical standards and the conduct of local government officials. In 1991, the Legislature passed the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq. Attached is N.J.S.A. 40A:9-22.5, which sets forth the standards that officers and employees of local governments are to use in determining when they have a potential conflict of interest. Basically, this law codifies the common sense position that a government official's loyalty must be to the public and his/her office. Complaints for violations of this law may be filed with the municipal ethics board, and if your municipality has chosen not to have such an agency, then they should be filed with the State's Local Finance Board. It is also possible to obtain advice from the Local Finance Board by submitting a written request. I strongly recommend that you contact your municipal attorney for assistance before contacting them.

Violations of the Local Government Ethics Law may result in a fine of not less than \$100 and no more than \$500. See N.J.S.A. 40A:9-22.10 (See Attached).

As a general guide to conflicts of interest, Michael Pane IV, Esq. in his work on Local Government Law, explained that conflicts of interest fall into four (4) categories: direct financial, indirect financial, direct personal and indirect personal. By way of guidance, I offer the following examples, which are meant to be descriptive, not exclusive.

A **direct financial conflict** would be a business run by you or your spouse that needs a zoning permit; an **indirect financial conflict** would be a competitor of a business run by you or your spouse seeking the permit; a **direct personal** example would be if a next-door neighbor of your mom is seeking a permit; and finally, an **indirect personal** example would be if your church was seeking a permit.

If at any time, you believe you may have a conflict of interest, you should consult with the municipal attorney. If they agree that a conflict of interest exists, you should allow your municipality's "conflict" Zoning Official to handle the matter. Most municipalities establish reciprocity agreements with neighboring municipalities to handle conflicts of interests when they arise.

Illegal Conduct

As a public servant, you will encounter individuals who want to do things for you in the hope that you will give them the result they seek. Tragically, some public officials get themselves in trouble as a result. Conduct that was considered acceptable in prior years may no longer be

legal. For instance, many municipalities are implementing limits on the amount of monetary contributions professionals may contribute to local campaigns; this type of law is known as a "Pay to Play Ordinance." I am aware of at least one engineering firm, which has a statewide presence, that has discontinued taking anyone in the municipal family to lunch and they have banned all campaign contributions. Their primary concern is that they may be giving the appearance that their appointments to municipal authorities have been bought. In the past, going to lunch with City Professionals was routine; now, however, there is uncertainty as to the legality of this practice, and the best practice is to pay for your own lunch.

Similarly, developers and businessmen will attempt to buy you lunch, a drink, or a cup of coffee. When these offerings are so small that they could not possibly influence your conduct, they are not criminal acts. But Christopher Christie, then the United States Attorney for New Jersey, cautioned you to be careful because sometimes the act of simply accepting coffee leads to other gifts, which might cross the line into criminal conduct. Read the attached Star Ledger article of October 15, 2005.

I have also attached three (3) criminal laws you should familiarize yourself with:

- N.J.S.A. 2C:21-34 "False claim for payment of government contract"
- N.J.S.A. 2C:27-10 "Acceptance of receipt of unlawful benefit by public servant for official behavior"
- N.J.S.A. 2C:27-11 "Offer of unlawful benefit to public servant for official behavior." The bribery section has an important exception, "*Trivial benefits the receipt of which involve no risk that the public servant would perform official duties in a biased or partial manner.*"

This will probably cover a cup of coffee, but does it cover a bottle of scotch at Christmas time? The answer is that we do not know. In the past, this was considered permissible; but now, it is my opinion that you should reject it.

It would be better if the municipal administrator, in consultation with the municipal attorney, developed a policy for all municipal officers and employees to follow. Perhaps you could post that policy in October, so that the people you interact with will avoid putting you in a compromising position in December.

40A:9-22.5. Provisions requiring compliance by local government officers, employees

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,s.5.

40A:9-22.10 Violations, penalties.

10. 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.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 (C.2A:58-10 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 (C.2A:58-10 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,s.10; amended 1999, c.440, s.101.

2C:21-34 Penalty for false contract payment claims, representation, for a government contract; prevailing wage violations; grading.

97. a. A person commits a crime if the person knowingly submits to the government any claim for payment for performance of a government contract knowing such claim to be false, fictitious, or fraudulent. If the claim submitted is for \$25,000.00 or above, the offender is guilty of a crime of the second degree. If the claim exceeds \$2,500.00, but is less than \$25,000.00, the offender is guilty of a crime of the third degree. If the claim is for \$2,500.00 or less, the offender is guilty of a crime of the fourth degree.

b. A person commits a crime if the person knowingly makes a material representation that is false in connection with the negotiation, award or performance of a government contract. If the contract amount is for \$25,000.00 or above, the offender is guilty of a crime of the second degree. If the contract amount exceeds \$2,500.00, but is less than \$25,000.00, the offender is guilty of a crime of the third degree. If the contract amount is for \$2,500.00 or less, the offender is guilty of a crime of the fourth degree.

c. An employer commits a crime if the employer knowingly pays one or more employees employed in public work subject to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) at a rate less than the rate required pursuant to that act. If the contract amount is for \$75,000.00 or above, the employer is guilty of a crime of the second degree; if the contract amount exceeds \$2,500.00, but is less than \$75,000.00, the employer is guilty of a crime of the third degree; and if the contract amount is for \$2,500.00 or less, the employer is guilty of a crime of the fourth degree. In addition, the employer shall be deemed to have caused loss to the employees in the amount by which the employees were underpaid and shall be subject to the provisions of N.J.S.2C:43-3 regarding fines and restitution to victims and be subject to other pertinent provisions of Title 2C of the New Jersey Statutes, including, but not limited to, N.J.S.2C:43-4, 2C:43-6 and 2C:44-1.

L.1999,c.440,s.97; amended 2003, c.276, s.2.

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.

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.