

Local Government Ethics Law in Context

Presented by:

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Official Misconduct, N.J.S.A. §2C:30-2

- ▶ A public servant is guilty of official misconduct when, with purpose **to obtain a benefit** for himself or another **or to injure or to deprive another of a benefit**.
 - a. knowingly commits an unauthorized act or an act in an unauthorized manner related to his office; or
 - b. knowingly fails to act as required by law "or is clearly inherent in the nature of his office."

Ethics Basics

- ▶ Fact sensitive, case by case basis
- ▶ Test:
 - circumstances **may be interpreted**
 - as having the **ability to tempt**
 - a public official **to depart** from his/her public duties
- ▶ Is proof of dishonesty necessary?
 - No!
- ▶ Test: proof of potential for conflict
- ▶ Self interest:
 - not in common with the general public
- ▶ "Realistic potential"

The 8 Commandments of the Local Government Ethics Law

- ▶ 1. No interest in a business that conflicts with one's public duties.
- ▶ 2. No personal employment by independent local authorities for which an individual was an officer for one year following termination of office.
- ▶ 3. No unwarranted privileges/gains (direct or indirect).
- ▶ 4. No voting or influencing a decision where there may be an actual or apparent conflict of interest.

The 8 Commandments of the Local Government Ethics Law

- ▶ 5. No employment (paid or unpaid) that may **reasonably prejudice** one's judgment in the exercise of official duties.
- ▶ 6. No gifts or political contributions or solicitations
 - ▶ "for the purpose of influencing him, directly or indirectly, in the discharge of his official duties."
- ▶ 7. No trading on inside information or position.
- ▶ 8. No representation provision (certain exceptions).

Exceptions

- ▶ Political contributions
- ▶ Information or services available to the public
- ▶ Union activities
- ▶ Constituent inquiries without an exchange
- ▶ Representing one's own interests

“Its in the way that you use ‘it’”

- ▶ A Council Member sent a letter on town stationery to the NJ-DEP on behalf of a resident urging quick consideration of an application.
- ▶ A Council Member, who is an attorney, sent a letter on town stationery to the NJ-DEP on behalf of a client urging quick consideration of an application.
- ▶ *Exception: No gain that's any greater than that which could reasonably be expected to accrue to others*

Direct, indirect, financial or personal interest

- ▶ Might **reasonably** be expected to impair independent judgment or objectivity.

Clerk's Responsibilities

- ▶ Your son works for DPW and you are involved with the Civil Service or comparable disciplinary paperwork and process

Closed Session

- ▶ The Municipal Clerk, who had once lived with the former Mayor, attended closed session meetings of the Council when it discussed potential disciplinary proceedings against the former Mayor's two sons.
- ▶ Ministerial tasks
 - Taking notes at meetings?
 - Impairment of ability to perform duties
 - Dispassionate, thorough and objective way
 - Temptation to disclose confidential information
- ▶ Avoid perceived conflicts with personal interests.

Advisory Opinions

- ▶ Position of influence?
 - Procurement of products or services supplied
 - Submit the requisition
 - Execute certification of satisfactory procurement
- ▶ Privy to confidential information and perceived or actual conflict

Prohibition against representing other parties:

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.

Not limited to . . .

- ▶ Law suits or legal proceedings
 - Submission of applications and documents;
 - Locally required approvals;
 - E.g., construction permit.
- ▶ Applies:
 - Individual is represented by an attorney or other professional and
 - Doesn't appear before the governing body.

Legal?

- ▶ While considering a zoning code amendment, the Council President recused himself ***but continued to sit at the dais and perform his functions*** including directing debate, controlling the meeting and calling on interested parties. (**Beacon Hill Farm LLC. v. Marlboro, unreported 2006, 2006 WL 1161361**)

Influence

- ▶ A developer submitted a conforming application to the Planning Board to build a commercial building center incorporating a day care center. The Mayor forced the developer to scale back the application, but still voted against it. Subsequently, it came out that the Mayor had an interest in another day care center nearby.

Nature of Relationship

- ▶ Several Zoning Board members voted to approve a controversial expansion of a college library even though they were alumni.
- ▶ **Hughes v. Monmouth University, Docket No. A-2227-06T2 (App.Div.2007)**

Remoteness

- ▶ The Deputy Mayor voted for a bond ordinance to acquire open space in an area where 90 homeowners lived, including his mother.

Advice of Counsel Defense

- 1) The advice was received prior to the action taken
- 2) The individual who offered the advice possessed authority or responsibility with regard to ethical issues
- 3) The individual seeking advice made full disclosure of all pertinent facts and circumstances and
- 4) The individual complied with the advice, including all the restrictions contained in it.

Violations & Tenured Positions

- ▶ Follow the tenure removal process
- ▶ *Borough of Pine Hill v. May*, 2014 N.J. Super. Unpub. LEXIS 1660 (App. Div. July 2014)
 - Defect: suspended without pay pending hearing
 - No hearing prior to removal of pay: violation of tenure law (tax collector)
 - Post suspension hearing cured the defect
 - No "back pay"

THANK YOU!

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