



## LOCAL GOVERNMENT ETHICS LAW PUBLIC ADVISORY OPINIONS

This file was created, as a public resource, by the New Jersey Libertarian Party's Open Government Advocacy Project. It contains what the New Jersey Local Finance Board (LFB) claims to be every "advisory opinion" issued by the LFB since the Local Government Ethics Law was enacted. We have painstakingly scanned the paper copies of the Advisory Opinions and converted them to this text-searchable file. Every care has been taken to ensure that the text of our version is identical to that in the original opinions. We caution readers, however, to view the original paper records which can be accessed by clicking [here](#).

Very truly yours,

John Paff, Chair  
New Jersey Libertarian Party's Open Government Advocacy Project  
[www.njlp.org](http://www.njlp.org)

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**Local Finance Board**

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**Local Finance Board**

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**Local Finance Board  
Advisory Opinion 91-001  
February 14, 1992**

Dear [Redacted]

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

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

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

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

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

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

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

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

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

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

/s/ Barry Skokowski, Sr. Chairman,  
Local Finance Board

**Local Finance Board**  
**Advisory Opinion 91-009**  
**April 20, 1992**

Dear [Redacted]

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

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

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

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

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

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

A second tier to this issue is whether the local government employee, as a Planning and Zoning Board Secretary or a member of the local Board of Health, is able to use that official position to secure an unwarranted privilege or advantage. Specifically, having inside information not generally known to the public. For instance, a proposal submitted by the relative of a local government employee may have an advantage over others submitted.

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

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

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

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

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

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

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

Sincerely,  
/s/ Barry Skokowski, Sr. Chairman,  
Local Finance Board



**Local Finance Board**  
**Advisory Opinion 91-011**  
**April 20, 1992**

Dear Mr. [redacted]:

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

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

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

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

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

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

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

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

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

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

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

/s/ Barry Skokowski, Sr. Chairman,  
Local Finance Board

**Local Finance Board**  
**Advisory Opinion 91-016**  
**June 12, 1992**

Dear [redacted]:

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

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

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

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

/s/ Barry Skokowski, Sr. Chairman,  
Local Finance Board

**Local Finance Board**  
**Advisory Opinion 91-020**  
**January 29, 1992**

Dear [redacted]:

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

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

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

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

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

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

Sincerely,

/s/ Barry Skokowski, Sr. Chairman,  
Local Finance Board

**Local Finance Board  
Advisory Opinions 92-004 & 93-019  
February 8, 2005**

QUESTION SUMMARY:

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

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

DISCUSSION:

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

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

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

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

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

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

members of the proposed company, may by resolution grant the petition and constitute such applicants a volunteer fire company of the district."

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

Michael A. Pane, in his work New Jersey Practice: Local Government Law, addresses the doctrine of incompatibility of offices. He states,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### SYNOPSIS OF PUBLIC HEARING:

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

The Board held a public hearing on this subject on July 12, 1994. The State Association of Fire Districts presented a position that a majority of their 102 Fire District members

believe that elected officials are in conflict by also serving as commissioners. They did not believe that volunteer members of the fire company are in conflict. There was additional support for their position from individual fire districts who have instituted policies whereby Fire Commissioners cannot hold an elected or appointed position in the fire department. It is not known if these districts are already included in the survey presented by the State Association of Fire Districts.

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

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

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

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

#### ADVISORY OPINION:

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

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

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



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

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

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

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

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

/s/ Beth Gates, Chair,  
Local Finance Board

**Local Finance Board**  
**Advisory Opinion 92-009**  
**June 19, 1992**

Dear Mr. [redacted]:

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

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

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

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

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

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

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

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

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

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

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

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

Thus, the conclusions that may be reached depend on the manner in which bids are secured. If the bids are secured through the open competitive process of being publicly advertised and opened, a local government officer would not have an opportunity to secure an unwarranted privilege or advantage over other bidders.

It is under this circumstance that the Board advises that the Local Government Ethics Law would not be violated.

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

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

/s/ Barry Skokowski, Sr. Chairman,  
Local Finance Board

**Local Finance Board**  
**Advisory Opinion 92-011**  
**August 10, 1992**

Dear Mr. [redacted]:

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

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

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

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

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

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

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

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

A specification is considered a concise statement of a set of requirements for a service to be performed. The preparation of specifications is not subject to public review. A municipality has latitude in the method utilized to develop specifications. While the expertise of a Council member, who owns a cleaning service, would help to ensure that concise specifications could be developed, those actions are counter to the provisions of the Local Government Ethics Law if he is intent on submitting a bid. A local government officer may

not act in his or her official capacity on any matter where he or she has a direct financial interest that might reasonably be expected to impair his objectivity or independence of judgment. It is obvious that a local government officer, intending to submit a bid for cleaning services, holds a direct financial interest which could reasonably be expected to impair his objectivity or independence of judgment in recommending the scope of specifications.

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

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

Secondly, a member of the Council, who owns a cleaning service, may not submit a bid to perform such a service for the municipality he serves. Such a situation may cause an official to yield to the temptation of a direct financial interest and may result in a violation of the following provision of the law. Under N.J.S.A. 40A:9-22.5 (c) it states:

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

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

A member of the governing body, having an interest in a cleaning service, could use his or her official position to gain an advantage over others in choosing the means by which quotes would be secured. He or she could also utilize "insider information" as a result of serving as a local government officer and secure an unwarranted advantage over others who submit

bids for cleaning services. A public official is disqualified from exercising the authority of his or her office in any matter in which he has a financial interest that conflicts with his public duty. Thus, a member of the Borough Council may not submit bids to the municipality in which he serves as a local government officer. Therefore, even the appearance of impropriety is avoided.

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

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

Sincerely,

/s/ Barry Skokowski, Sr. Chairman,  
Local Finance Board

**Re: Local Government Ethics Law  
Advisory Opinion 92-014  
August 10, 1992**

Dear [redacted]:

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

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

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

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

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

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

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



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

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

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

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

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

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

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

Sincerely,

/s/ Barry Skokowski, Sr. Chairman,  
Local Finance Board

**Local Finance Board**  
**Advisory Opinion 92-015**  
**July 8, 1992**

Dear [redacted]:

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

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

The Board has determined that such a proposed activity would constitute a violation of the Local Government Ethics Law. The Board has based its determination upon the following analysis. Under N.J.S.A 40A:9-22.5 (a) it states:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

/s/ Barry Skokowski, Sr. Chairman,  
Local Finance Board

**Local Finance Board**  
**Advisory Opinion 92-019**  
**February 4, 1993**

Dear [redacted]:

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

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

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

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

- (1) Having an interest in a business organization, transaction, or professional activity that would be in substantial conflict with the proper discharge of your duties in the public interest;
- (2) Using your position to secure an unwarranted privilege for yourself or someone else;
- (3) Acting in your official capacity in this matter;
- (4) Using your public office or employment, or any information, not generally available to the members of the public, for the purpose of securing financial gain for yourself, member of your immediate family, or business organization with which you are associated, or
- (5) Representing your husband or sons before the Township.

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

It appears that you would not have any involvement in actually awarding bids, nor would you violate any of the five conditions mentioned above. Therefore, there is nothing to

indicate that this proposed activity would be a violation of the Ethics Law under these circumstances.

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

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

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

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

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

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

Sincerely,

/s/ Barry Skokowski, Sr. Chairman,  
Local Finance Board

**Local Finance Board**  
**Advisory Opinion 92-028**  
**March 12, 1993**

Dear [redacted]:

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

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

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

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

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

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

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



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

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

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

Sincerely,

/s/ Barry Skokowski, Sr. Chairman,  
Local Finance Board

**Local Finance Board**  
**Advisory Opinion 93-003**  
**June 16, 1993**

Dear [redacted]:

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

/s/ Barry Skokowski, Sr. Chairman,  
Local Finance Board

**Local Finance Board**  
**Advisory Opinion 93-020**  
**October 6, 1993**

Dear [redacted]:

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

You have inquired as to whether you, as a Certified Public Accountant and a Commissioner of [redacted] Housing authority [redacted], may submit a bid to perform the audit for a non-profit Senior Citizen Housing Facility of which you are not associated.

Please be advised that, after a review of the facts and details of your request, the Board has determined, at a regular meeting of the Board on September 28, 1993, that the proposed activity does not appear to be a violation of the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq., and therefore, would not be prohibited.

It appears that your duties as a member of the [redacted] Housing Authority would not overlap your contractual services to a private, non-profit senior citizen center. Thus, the proposed activity as described in your request for an advisory opinion and the information obtained during our staff's research into this matter appears to be acceptable.

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

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

Sincerely,

/s/ Elaine Mahoney, Acting Executive Secretary  
Local Finance Board

**Re: Local Government Ethics Law**  
**Advisory Opinion 93-023**  
**April 15, 1994**

Dear [redacted]:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Therefore, the Board, at its February 10, 1994, meeting, discussed this matter and concluded that the proposed activity; namely, the appointment of a real estate developer to the Township Planning Board if the individual in question is a builder of both residential

and commercial property within the Township, would not constitute a violation of the provisions of this act. However, it must be understood that, if appointed, the real estate developer-appointee may have to recuse himself on matters affecting his business interests or to refrain from conducting certain development activity in the Township.

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

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

Sincerely,

/s/ Beth Gates, Chair  
Local Finance Board

**Local Finance Board**  
**Advisory Opinion 95-001**  
**June 30, 1995**

Dear [redacted]:

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

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

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

It is generally concluded that under common law doctrines, there are incompatibility of offices and conflict of interests. The Legislature has enacted N.J.S.A. 18A:6-8.4, which provides that no person employed by a school district is disqualified by reasons of this employment from holding any elective or appointive State, county, or municipal office, except as a member of the school board employing the person. Further, the Court in *Schulman v. O'Reilly-Lando*, 226 N.J. Super. 626 (App. Div. 1988), concludes that this statute permitted a school nurse/council member to fully participate as a member of the municipal governing body including voting on the school budget (enclosed). It appears, therefore, that the statutes specifically allow a councilperson, employed by the school district, to vote on a defeated school budget.

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

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

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



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

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

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

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

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

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

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

Sincerely,  
/s/ Beth Gates, Chair  
Local Finance Board

**Local Finance Board**  
**Advisory Opinion 95-010**  
**August 19, 1996**

Dear [redacted]:

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

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

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

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

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

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

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

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

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

Sincerely,  
/s/ Beth Gates, Chair  
Local Finance Board

**Local Finance Board**  
**Advisory Opinion 96-006**  
**August 19, 1996**

Dear [redacted]:

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

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

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

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

Commissioners of County Boards of Taxation are not "local government officers" pursuant to N.J.S.A. 40A:9-22.3(g). Rather, the Commissioners are State officers or employees subject to the requirements of the State's Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq.

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

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

Sincerely,

/s/ Beth Gates, Chair  
Local Finance Board

**Local Finance Board**  
**Advisory Opinion 04-001**  
**March 11, 2004**

Dear Mayor [redacted]:

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

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

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

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

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

The New Jersey Statutes indicate that, as Mayor of the Township of [redacted] you are the Chairman of the Township Committee and head of the Municipal Government with the powers to preside at meetings of the Committee and debate and vote on all questions before the Committee. The Committee is the legislative body of the municipality having the power to (1) pass, adopt, amend and repeal any ordinance or, where permitted, any resolution for any purpose required for the government of the municipality or for the accomplishment of any public purpose for which the municipality is authorized to act under general law; (2) control and regulate the finances of the municipality and raise money by borrowing and taxation; (3) create such offices and positions as they deem necessary, (4) investigate any activity of the municipality; and (5) remove any officer of the municipality, other than those

officers excepted by law, for cause. The Township Committee, of which you are a member, has all the executive responsibilities of the municipality not placed, by general law or this act, in the office of the Mayor. N.J.S.A.40A:63-5 and 63-6.

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

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

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

Sincerely,

/s/ Susan Jacobucci, Chair  
Local Finance Board