

Ethical complaints must be taken seriously

The Local Government Ethics Law requires "local government officers," such as elected local officials, to annually complete and file a Financial Disclosure Statement, which publicly reveals the sources of their and their families' income, and identifies real estate and businesses within which they and their families have a financial interest.

A sample FDS form is online at www.state.nj.us/dca/lgs/ethics/pdfs/fds_fill-in_form.pdf.

The idea behind the FDS is to inform the public of what businesses, real estate enterprises, etc. that public officials and their immediate families own, so that conflicts of interest can be more easily discovered.

According to the Local Government Ethics Law's declared purpose, "the vitality and stability of representative democracy depends upon the public's confidence in the integrity of its elected and appointed representatives (and that) whenever the public perceives a conflict between the private interests and the public duties of a government officer or employee, that confidence is imperiled." N.J.S.A. 40A:9-22.2.

In towns that do not have their own ethics boards, the Local Government Ethics Law is enforced by the Local Finance Board within the New Jersey Department of Community Affairs. The Local Government Ethics Law directs the LFB to investigate any and all complaints that the law has been violated, and empowers the LFB to fine violators "not less than \$100.00 nor more than \$500.00" per violation.

Point Of View

By John Paff

N.J.S.A. 40A:9-22.10.

Unfortunately, the LFB filing requirement is widely ignored and my experience shows that the LFB does not meaningfully enforce the FDS filing requirements when complaints are filed.

For example, on Nov. 21, 2005, I filed a complaint with the LFB against Patricia Mack of Elizabeth, who serves as municipal prosecutor for the city of Elizabeth.

My complaint was that Ms. Mack failed to fill out her 2005 FDS completely. Specifically, she did not list the local government agencies for which she worked and the positions she held. She also did not state whether she received any fees, honorariums or gifts, and whether she held interests in any businesses or real estate.

On the latter point, the FDS requires local officials, in Section II.E for example, to "list the address and a brief description of all real property in the state of New Jersey in which an interest was held." The FDS specifically informs the official that for any item where "none" is the appropriate answer, that the official "please indicate 'none' in the space provided."

For example, if the neither the official nor his or her family has an interest

in any New Jersey real estate, the official should write "none" in Section II.E, rather than just leaving that section blank.

After a nine-month investigation, the LFB issued its "Notice of Determination" informing me that my complaint had been dismissed. A copy of my complaint, Mack's original FDS, the Notice of Determination and Mack's amended FDS are online at <http://lpsmc.org/OGTF/MackWe-bready.pdf>.

Interestingly, even though its own form instructs local officials to state "none" where applicable, the LFB found that that there is "no statutory provision requiring the word 'none' to be written in where appropriate" and that "an official's failure to write 'none' where such an indication is lacking would not require the official to amend their form, absent a specific allegation of missing information."

Apparently, the LFB's instructions, which are written in bold typeface on the face of the form, do not need to be followed.

More importantly, the LFB, upon receipt of my complaint, gave Ms. Mack a chance to file a "corrected form," which revealed the following information about Ms. Mack that was not listed on the original form:

- She works as a per diem prosecutor for the city of Newark, and
 - She owns real estate in Lopatcong Township, Warren Township. (Interestingly, Ms. Mack left the real estate question blank on her original filing.)
- Instead of finding that Ms. Mack

was in violation for omitting this information on her original filing, the LFB invoked its "established policy" of giving her another chance to provide the missing information and, after she did that, dismissed my complaint because "it no longer [had] a reasonable factual basis."

In sum, officials can omit as much material as they wish from their FDS forms without fear of penalty. In the unlikely event that someone complains, the official will be given an opportunity to amend their FDS and as long as they do that, the complaint will be dismissed.

Also, officials apparently don't need to completely come clean even on their amended FDS — you will note that Ms. Mack, on her amended form, does not reveal the block, lot or address of her Lopatcong property even though the FDS specifically requires that this information be provided.

What the LFB should have done, of course, is to have fined Ms. Mack \$100 to \$500 for her failure to properly complete her form. Such would have sent a message to all public officials that the FDS is an important tool for discovering self-dealing and conflicts of interest and cannot be trifled with.

Unfortunately, the LFB, by failing to provide a meaningful enforcement mechanism, has eviscerated the Local Government Ethics Law and has done a disservice to the public.

John Paff is a resident of Somerset and a leading proponent of an updated sunshine law, available at www.njsunshinelaw.com.