

The Local Finance Board's Role in Local Government Ethics Law

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League of Municipalities Mini-Conference

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**WHO BEHAVE
AMISS, OR BETRAY
THEIR PUBLIC
TRUST.**

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Alexander Hamilton
American Thinker

RECENT ETHICS NEWS AROUND THE USA

▶ **UNTIED STATES**- Congressman Thinks Ethics Office Too Tough, So He Tries To Cut It

Alabama - A jury [in June] found Alabama House Speaker Mike Hubbard guilty on 12 counts of public corruption — agreeing with prosecutors' assertions that the Republican used the power and prestige of his political offices to benefit his companies and clients.

Speaking in sharp tones, Alabama House Speaker Mike Hubbard on Wednesday squared off with a state prosecutor over \$2.3 million in business and investments Hubbard's companies received and emails Hubbard sent to his political mentor-turned-lobbyist asking for help finding a job.

Alabama House Speaker Mike Hubbard took the witness stand in his own defense at his ethics trial Tuesday, saying he took precautions to obey state law with contracts his companies received and made "not a cent" from campaign work steered to his printing company.

RECENT ETHICS NEWS AROUND THE USA

- ▶ **New Mexico** - A judge ordered the New Mexico Legislature to turn over 15 subpoenaed documents to prosecutors as they pursue fraud charges against a former senator, the latest volley in a standoff about what correspondence and conversations among lawmakers and their advisers can be disclosed in court.

RECENT ETHICS NEWS AROUND THE USA

- ▶ **New York** proposes legislation for public officials to lose pensions if convicted of crimes related to their office.
- ▶ **New Jersey** - In an effort to stem public corruption scandals, the state Senate on Monday unanimously passed a bill that would require all New Jersey elected officials undergo ethics training as soon as they're elected. View story. The bill (S84) mandates elected officials take the training within six months of their first term. Officials who skip out on the ethics education would face a \$5,000 fine

ROLE OF THE LOCAL FINANCE BOARD IN THE LOCAL GOVERNMENT ETHICS LAW

- ▶ NJSA 40A:9-22.1 e. It is the purpose of this act to provide a method of assuring that standards of ethical conduct and financial disclosure requirements for local government officers and employees shall be clear, consistent, uniform in their application, and enforceable on a Statewide basis, and to provide local officers or employees with advice and information concerning possible conflicts of interest which might arise in the conduct of their public duties.

ROLE OF THE LOCAL FINANCE BOARD IN THE LOCAL GOVERNMENT ETHICS LAW

- ▶ 40A:9-22.4 Local Finance Board to have jurisdiction The Local Finance Board in the Division of Local Government Services in the Department of Community Affairs shall have jurisdiction to govern and guide the conduct of local government officers or employees regarding violations of the provisions of this act who are not otherwise regulated by a county or municipal code of ethics promulgated by a county or municipal ethics board in accordance with the provisions of this act. Local government officers or employees serving a local government agency created by more than one county or municipality shall be under the jurisdiction of the board. The board in interpreting and applying the provisions of this act shall recognize that under the principles of democracy, public officers and employees cannot and should not be expected to be without any personal interest in the decisions and policies of government; that citizens who are government officers and employees have a right to private interests of a personal, financial and economic nature; and that standards of conduct shall distinguish between those conflicts of interest which are prejudicial and material and are, therefore, corruptive of democracy and free society.

ROLE OF THE LOCAL FINANCE BOARD IN THE LOCAL GOVERNMENT ETHICS LAW

- ▶ **Oversee and uphold the ethical standards set forth in the LGEL**
 - ▶ Receive complaints
 - ▶ Conduct discovery and inquiries
 - ▶ Hold hearings
 - ▶ Come to conclusions
 - ▶ Impose fines
 - ▶ Conduct appeals hearings of county or municipal ethics boards



Ethics is knowing the difference between what you
have a right to do and what is right to do.

(Potter Stewart)

izquotes.com

ETHICS - QUICK REVIEW

- ▶ C - Conflicts
- ▶ I - Information/Independence of Judgment
- ▶ G - Gifts
- ▶ A - Abuse of Office
- ▶ R - Representation

CONFLICTS

- ▶ NJSA 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.

CONFLICTS - AUTHORITIES

- ▶ NJSA 40A:9-22.5 b. No independent local authority shall, for a period of one year next subsequent to the termination of office of a member of that authority:
 - ▶ (1) award any contract which is not publicly bid to a former member of that authority;
 - ▶ (2) allow a former member of that authority to represent, appear for or negotiate on behalf of any other party before that authority; or
 - ▶ (3) employ for compensation, except pursuant to open competitive examination in accordance with Title 11A of the New Jersey Statutes and the rules and regulations promulgated pursuant thereto, any former member of that authority. The restrictions contained in this subsection shall also apply to any business organization in which the former authority member holds an interest.

INFORMATION

- ▶ NJSA 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 and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or business organization with which he is associated.

INDEPENDENCE OF JUDGMENT

- ▶ NJSA 40A:9-22.5 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

GIFTS

- ▶ NJSA 40A:9-22.5 f. No local government officer or employee, member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the local government officer has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence

ABUSE OF OFFICE

- ▶ NJSA 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.

ABUSE OF OFFICE – CRIMINAL OFFICIAL MISCONDUCT

▶ **2C:30-2. Official misconduct**

A public servant is guilty of official misconduct when, with purpose to obtain a benefit for himself or another or to injure or to deprive another of a benefit:

a. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized or he is committing such act in an unauthorized manner; or

b. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

Official misconduct is a crime of the second degree. If the benefit obtained or sought to be obtained, or of which another is deprived or sought to be deprived, is of a value of \$200.00 or less, the offense of official misconduct is a crime of the third degree.

REPRESENTATION

- ▶ NJSA 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 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.



ROLE OF THE LOCAL FINANCE BOARD IN THE LOCAL GOVERNMENT ETHICS LAW

- ▶ Create a process and oversee the collection and storage of Financial disclosure Forms for Local Government Officials.

ROLE OF THE LOCAL FINANCE BOARD IN THE LOCAL GOVERNMENT ETHICS LAW

- ▶ Provide Advisory Opinions



WHO YOU GONNA CALL?

- ▶ Municipal Solicitor
- ▶ Personal Attorney
- ▶ Fellow government employee
- ▶ Friend
- ▶ Ghostbusters

Local Finance Board

ADVISORY OPINIONS

- ▶ 40A:9-22.8 Request for advisory opinion from Local Finance Board A local government officer or employee not regulated by a county or municipal code of ethics may request and obtain from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the board shall not be made public, except when the board by the vote of two-thirds of all of its members directs that the opinion be made public. Public advisory opinions shall not disclose the name of the local government office

What to Do?

- ▶ The request must be made by the person involved or
- ▶ The Solicitor on his/her behalf
- ▶ The “action” needing an Advisory Opinion must be prospective
- ▶ Include as many details as possible

What the LFB Does

- ▶ Considers the request for advisory opinion in Executive Session. In 1992, Ags office wrote opinion that affirmed that LFB could render and discuss advisory opinions in Executive Session.
- ▶ Is it a valid request?
 - ▶ Person requesting
 - ▶ Prospective
 - ▶ An issue legitimately within LFB purview

What the LFB Does

- ▶ If legitimate request, LFB with DAG renders an Advisory Opinion. Confidential
- ▶ Made public...possibly IF
 - ▶ Applies to many situations or
 - ▶ Many government officials
 - ▶ Applies for the “greater good”
 - ▶ Published Opinions keep the location and requestors name confidential

Dear LoFiBo

- ▶ I work in XYZ government office as a Paralegal. My direct supervisor once asked me to pick up her daughter from school because of an emergency she had associated with her job. Now she asks me to do this on a regular basis. Is this okay?
- ▶ What is the answer?
- ▶ What would LFB do?

Dear LoFiBo

- ▶ Councilman previously worked for Acme Company in Greenacre Township [before he was elected councilman] He worked as an engineer/manager of the property. Acme closed and the property fell into disrepair. New company comes in and wants to rehabilitate the property. The Town was ecstatic. Councilman, recently elected, offered to do anything he could to help the new owners since he knew the building like the back of his hand. He even wrote an email that said that once the new company was up and running he would be perfect as their plant manager. His political rival pointed out this may be inappropriate. Councilman writes to LFB after solicitor {friend of political rival] refuses to officially weigh in.

Dear LoFiBo

- ▶ I am a Committeeman in XYZ Township. Recently, a private organization approached me and wanted me to “facilitate” their application to the Planning Board. I did what I would for any resident/stakeholder. After the application got through the Planning Board, an envelop arrived with Two Giants Tickets, saying thanks for all you help. Can I accept them?

Other Examples

- ▶ Federal Officer Riding with friend as passenger in personal vehicle, got pulled over. As local Police Officer approached the car, the Fed officer got out and showed Fed ID to Officer. Officer did not ask to see ID....
- ▶ FOP/PBA cards
- ▶ Do you know who I am

Other Examples

The background features abstract, overlapping geometric shapes in various shades of blue, ranging from light sky blue to dark navy blue. These shapes are primarily located on the right side of the slide, creating a modern, layered effect.

**The chief internal enemies
of any state are those
public officials who betray
the trust imposed upon
them by the people.**

QUOTEHD.COM

Dalton Trumbo
American Novelist