

# International Municipal Lawyers Association

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## Work Session X – ETHICS

### ETHICS – UPDATING THE LAW, TRAINING LOCAL OFFICIALS

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The materials attached include

New Jersey Local Government Ethics Law  
Report of the Governor’s Task Force  
Handout of Ethics Training PowerPoint

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# New Jersey Department of Community Affairs

## Division of Local Government Services

### Local Finance Board

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The Local Government Ethics Law was enacted in 1991. The Local Finance Board in the Department of Community Affairs Division of Local Government Services performs certain functions under this law which are described in the DCA Programs Book under [Local Government Ethics Law](#).

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#### NEW JERSEY STATUTES

#### TITLE 40A:9-22.1 et seq.

#### LOCAL GOVERNMENT ETHICS LAW

#### (CURRENT TO 3/15/91)

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The text of the statute follows:

#### SECTION

- [40A:9-22.1](#) Short title
- [40A:9-22.2](#) Findings, declarations
- [40A:9-22.3](#) Definitions
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- [40A:9-22.18](#). Response by county ethics board to written complaint
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  - [40A:9-22.25](#). Written materials to be preserved for at least five years
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### **40A:9-22.1. Short title**

This act shall be known and may be cited as the "Local Government Ethics Law."

L.1991,c.29,s.1.

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### **40A:9-22.2 Findings, declarations**

The Legislature finds and declares that:

- a. Public office and employment are a public trust;
- b. The vitality and stability of representative democracy depend upon the public's confidence in the integrity of its elected and appointed representatives;
- c. Whenever the public perceives a conflict between the private interests and the public duties of a government officer or employee, that confidence is imperiled;
- d. Governments have the duty both to provide their citizens with standards by which they may determine whether public duties are being faithfully performed, and to apprise their officers and employees of the behavior which is expected of them while conducting their public duties; and
- 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.

L.1991,c.29,s.2.

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### **40A:9-22.3 Definitions**

As used in this act:

a. "Board" means the Local Finance Board in the Division of Local Government Services in the Department of Community Affairs;

b. "Business organization" means any corporation, partnership, firm, enterprise, franchise, association, trust, sole proprietorship, union or other legal entity;

c. "Governing body" means, in the case of a municipality, the commission, council, board or body, by whatever name it may be known, having charge of the finances of the municipality, and, in the case of a county, the board of chosen freeholders, or, in the case of a county having adopted the provisions of the "Optional County Charter Law," P.L.1972, c.154 (C.40:41A-1 et seq.), as defined in the form of government adopted by the county under that act;

d. "Interest" means the ownership or control of more than 10% of the profits, assets or stock of a business organization but shall not include the control of assets in a nonprofit entity or labor union;

e. "Local government agency" means any agency, board, governing body, including the chief executive officer, bureau, division, office, commission or other instrumentality within a county or municipality, and any independent local authority, including any entity created by more than one county or municipality, which performs functions other than of a purely advisory nature, but shall not include a school board;

f. "Local government employee" means any person, whether compensated or not, whether part-time or full-time, employed by or serving on a local government agency who is not a local government officer, but shall not mean any employee of a school district;

g. "Local government officer" means any person whether compensated or not, whether part-time or full-time: (1) elected to any office of a local government agency; (2) serving on a local government agency which has the authority to enact ordinances, approve development applications or grant zoning variances; (3) who is a member of an independent municipal, county or regional authority; or (4) who is a managerial executive or confidential employee of a local government agency, as defined in section 3 of the "New Jersey Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-3), but shall not mean any employee of a school district or member of a school board;

h. "Local government officer or employee" means a local government officer or a local government employee;

i. "Member of immediate family" means the spouse or dependent child of a local government officer or employee residing in the same household.

L.1991,c.29,s.3.

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## **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 legitimate and unavoidable in a free society and those conflicts of interest which are prejudicial and material and are, therefore, corruptive of democracy and free society.

L.1991,c.29,s.4.

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

Local government officers or employees under the jurisdiction of the Local Finance Board shall comply with the following provisions:

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

b. No independent local authority shall, for a period of one year next subsequent to the termination of office of a member of that authority:

(1) award any contract which is not publicly bid to a former member of that authority;

(2) allow a former member of that authority to represent, appear for or negotiate on behalf of any other party before that authority; or

(3) employ for compensation, except pursuant to open competitive examination in accordance with Title 11A of the New Jersey Statutes and the rules and regulations promulgated pursuant thereto, any former member of that authority.

The restrictions contained in this subsection shall also apply to any business organization in which the former authority member holds an interest.

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

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

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

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

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

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

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

j. No elected local government officer shall be prohibited from making an inquiry for information on behalf of a constituent, if no fee, reward or other thing of value is promised to, given to or accepted by the officer or a member of his immediate family, whether directly or indirectly, in return therefor; and

k. Nothing shall prohibit any local government officer or employee, or members of his immediate family, from representing himself, or themselves, in negotiations or proceedings concerning his, or their, own interests.

L.1991,c.29,s.5.

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## **40A:9-22.6 Annual financial disclosure statement**

a. Local government officers shall annually file a financial disclosure

statement. All financial disclosure statements filed pursuant to this act shall include the following information which shall specify, where applicable, the name and address of each source and the local government officer's job title:

(1) Each source of income, earned or unearned, exceeding \$2,000 received by the local government officer or a member of his immediate family during the preceding calendar year. Individual client fees, customer receipts or commissions on transactions received through a business organization need not be separately reported as sources of income. If a publicly traded security is the source of income, the security need not be reported unless the local government officer or member of his immediate family has an interest in the business organization;

(2) Each source of fees and honorariums having an aggregate amount exceeding \$250 from any single source for personal appearances, speeches or writings received by the local government officer or a member of his immediate family during the preceding calendar year;

(3) Each source of gifts, reimbursements or prepaid expenses having an aggregate value exceeding \$400 from any single source, excluding relatives, received by the local government officer or a member of his immediate family during the preceding calendar year;

(4) The name and address of all business organizations in which the local government officer or a member of his immediate family had an interest during the preceding calendar year; and

(5) The address and brief description of all real property in the State in which the local government officer or a member of his immediate family held an interest during the preceding calendar year.

b. The Local Finance Board shall prescribe a financial disclosure statement form for filing purposes. For counties and municipalities which have not established ethics boards, the board shall transmit sufficient copies of the forms to the municipal clerk in each municipality and the county clerk in each county for filing in accordance with this act. The municipal clerk shall make the forms available to the local government officers serving the municipality. The county clerk shall make the forms available to the local government officers serving the county.

For counties and municipalities which have established ethics boards, the Local Finance Board shall transmit sufficient copies of the forms to the ethics boards for filing in accordance with this act. The ethics boards shall make the forms available to the local government officers within their jurisdiction.

For local government officers serving the municipality, the original statement shall be filed with the municipal clerk in the municipality in which the local government officer serves. For local government officers serving the county, the original statement shall be filed with the county clerk in the county in which the local government officer serves. A copy of the statement shall be filed with the board. In counties or municipalities which have established ethics boards a copy of the statement shall also be filed with the ethics board having jurisdiction over the local government officer. Local government officers shall file the initial financial disclosure statement within 90 days following the effective date of this act. Thereafter, statements shall be filed on or before April 30th each year.

c. All financial disclosure statements filed shall be public records.

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## **40A:9-22.7 Powers of Local Finance Board**

With respect to its responsibilities for the implementation of the provisions of this act, the Local Finance Board shall have the following powers:

- a. To initiate, receive, hear and review complaints and hold hearings with regard to possible violations of this act;
- b. To issue subpoenas for the production of documents and the attendance of witnesses with respect to its investigation of any complaint or to the holding of a hearing;
- c. To hear and determine any appeal of a decision made by a county or municipal ethics board;
- d. To forward to the county prosecutor or the Attorney General or other governmental body any information concerning violations of this act which may become the subject of criminal prosecution or which may warrant the institution of other legal proceedings by the Attorney General;
- e. To render advisory opinions as to whether a given set of facts and circumstances would constitute a violation of this act;
- f. To enforce the provisions of this act and to impose penalties for the violation thereof as are authorized by this act; and
- g. To adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and to do other things as are necessary to implement the purposes of this act.

L.1991,c.29,s.7.

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## **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 officer or employee unless the board in directing that the opinion be made public so determines.

L.1991,c.29,s.8.

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## **40A:9-22.9 Response by Local Finance Board to written complaint**

The Local Finance Board, upon receipt of a signed written complaint by any person alleging that the conduct of any local government officer or employee,



not regulated by a county or municipal code of ethics, is in conflict with the provisions of this act, shall acknowledge receipt of the complaint within 30 days of receipt and initiate an investigation concerning the facts and circumstances set forth in the complaint. The board shall make a determination as to whether the complaint is within its jurisdiction or frivolous or without any reasonable factual basis. If the board shall conclude that the complaint is outside its jurisdiction, frivolous or without factual basis, it shall reduce that conclusion to writing and shall transmit a copy thereof to the complainant and to the local government officer or employee against whom the complaint was filed. Otherwise the board shall notify the local government officer or employee against whom the complaint was filed of the nature of the complaint and the facts and circumstances set forth therein. The officer or employee shall have the opportunity to present the board with any statement or information concerning the complaint which he wishes. Thereafter, if the board determines that a reasonable doubt exists as to whether the local government officer or employee is in conflict with the provisions of this act, the board shall conduct a hearing in the manner prescribed by section 12 of this act, concerning the possible violation and any other facts and circumstances which may have come to the attention of the board with respect to the conduct of the local government officer or employee. The board shall render a decision as to whether the conduct of the officer or employee is in conflict with the provisions of this act. This decision shall be made by no less than two-thirds of all members of the board. If the board determines that the officer or employee is in conflict with the provisions of this act, it may impose any penalties which it believes appropriate within the limitations of this act. A final decision of the board may be appealed in the same manner as any other final State agency decision.

L.1991,c.29,s.9.

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#### **40A:9-22.10 Violations, penalties**

a. An appointed local government officer or employee found guilty by the Local Finance Board or a county or municipal ethics board of the violation of any provision of this act or of any code of ethics in effect pursuant to this act, shall be fined not less than \$100.00 nor more than \$500.00, which penalty may be collected in a summary proceeding pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). The board or a county or municipal ethics board shall report its findings to the office or agency having the power of removal or discipline of the appointed local government officer or employee and may recommend that further disciplinary action be taken.

b. An elected local government officer or employee found guilty by the Local Finance Board or a county or municipal ethics board of the violation of any provision of this act or of any code of ethics in effect pursuant to this act, shall be fined not less than \$100.00 nor more than \$500.00, which penalty may be collected in a summary proceeding pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et seq.).

L.1991,c.29,s.10.

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#### **40A:9-22.11 Disciplinary actions against officer, employee found guilty of violation**

The finding by the Local Finance Board or a county or municipal ethics board that an appointed local government officer or employee is guilty of the violation of the provisions of this act, or of any code of ethics in effect pursuant to this act, shall be sufficient cause for his removal, suspension, demotion or other disciplinary action by the officer or agency having the power of removal or discipline. When a person who is in the career service is charged with violating the provisions of this act or any code of ethics in effect pursuant to this act, the procedure leading to removal, suspension, demotion or other disciplinary action shall be governed by any applicable procedures of Title 11A of the New Jersey Statutes and the rules promulgated pursuant thereto.

L.1991,c.29,s.11.

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#### **40A:9-2.12 Conducting of hearings**

All hearings required pursuant to this act shall be conducted in conformity with the rules and procedures, insofar as they may be applicable, provided for hearings by a State agency in contested cases under the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

L.1991,c.29,s.12.

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#### **40A:9-22.13 Establishment of county ethics board**

a. Each county of the State governed under the provisions of P.L.1972, c.154 (C.40:41A-1 et seq.) may, by ordinance, and the remaining counties may, by resolution establish a county ethics board consisting of six members who are residents of the county, at least two of whom shall be public members. The members of the ethics board shall be appointed by the governing body of the county and no more than one of whom shall be from the same municipality. The members shall be chosen by virtue of their known and consistent reputation for integrity and their knowledge of local government affairs. No more than three members of the ethics board shall be of the same political party.

b. The members of the county ethics board shall annually elect a chairman from among the membership.

c. The members shall serve for a term of five years; except that of the members initially appointed, two of the public members shall be appointed to serve for a term of five years, one member shall be appointed to serve for a term of four years, and the remaining members shall be appointed to serve for a term of three years. Each member shall serve until his successor has been appointed and qualified. Any vacancy occurring in the membership of the ethics board shall be filled in the same manner as the original appointment for the unexpired term.

d. Members of the ethics board shall serve without compensation but shall be reimbursed by the county for necessary expenses incurred in the performance of their duties under this act.

L.1991,c.29,s.13.

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#### **40A:9-22.14 Provision of offices to county ethics board**

a. The governing body of the county shall provide the county ethics board with offices for the conduct of its business and the preservation of its records, and shall supply equipment and supplies as may be necessary.

b. All necessary expenses incurred by the county ethics board and its members shall be paid, upon certification of the chairman, by the county treasurer within the limits of funds appropriated by the county governing body by annual or emergency appropriations for those purposes.

c. The county ethics board may appoint employees, including independent counsel, and clerical staff as are necessary to carry out the provisions of this act within the limits of funds appropriated by the county governing body for those purposes.

L.1991,c.29,s.14.

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#### **40A:9-22.15 County code of ethics established**

Within 90 days after the establishment of a county ethics board, that ethics board shall promulgate, by resolution, a county code of ethics for all local government officers and employees serving the county. Local government officers and employees serving a county independent authority shall be deemed to be serving the county for purposes of this act.

The county code of ethics so promulgated shall be either identical to the provisions set forth in section 5 of this act or more restrictive, but shall not be less restrictive. Within 15 days following the promulgation thereof, the county code of ethics, and a notice of the date of the public hearing to be held thereon, shall be published in at least one newspaper circulating within the county and shall be distributed to the county clerk and to the heads of the local government agencies serving the county for circulation among the local government officers and employees serving the county. The county ethics board shall hold a public hearing on the county code of ethics not less than 30 days following its promulgation at which any local government officer or employee serving the county and any other person wishing to be heard shall be permitted to testify. As a result of the hearing, the ethics board may amend or supplement the county code of ethics as it deems necessary. If the county code of ethics is not identical to the provisions set forth in section 5 of this act, the county ethics board shall thereafter submit the county code of ethics to the Local Finance Board for approval. The board shall approve or disapprove a county code of ethics within 60 days following receipt. If the board fails to act within that period, the county code of ethics shall be deemed approved. A county code of ethics requiring board approval shall take effect for all local government officers and employees serving the county 60 days after approval by the board. A county code of ethics identical to the provisions set forth in section 5 of this act shall take effect 10 days after the public hearing thereon. The county ethics board shall forward a copy of the county code of ethics to the county clerk and shall make copies of the county code of ethics available to local government officers and employees serving the county.

L.1991,c.29,s.15.

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## **40A:9-22.16 Powers of county ethics board**

A county ethics board shall have the following powers:

- a. To initiate, receive, hear and review complaints and hold hearings with regard to possible violations of the county code of ethics or financial disclosure requirements by local government officers or employees serving the county;
- b. To issue subpoenas for the production of documents and the attendance of witnesses with respect to its investigation of any complaint or to the holding of a hearing;
- c. To forward to the county prosecutor or the Attorney General or other governmental body any information concerning violations of the county code of ethics or financial disclosure requirements by local government officers or employees serving the county which may become the subject of criminal prosecution or which may warrant the institution of other legal proceedings by the Attorney General;
- d. To render advisory opinions to local government officers or employees serving the county as to whether a given set of facts and circumstances would constitute a violation of any provision of the county code of ethics or financial disclosure requirements;
- e. To enforce the provisions of the county code of ethics and financial disclosure requirements with regard to local government officers or employees serving the county and to impose penalties for the violation thereof as are authorized by this act; and
- f. To adopt rules and regulations and to do other things as are necessary to implement the purposes of this act.

L.1991,c.29,s.16.

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## **40A:9-22.17 Request for advisory opinion from county ethics board**

A local government officer or employee serving the county may request and obtain from the county ethics board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the county code of ethics or any financial disclosure requirements. Advisory opinions of the county ethics board shall not be made public, except when the ethics 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 officer or employee unless the ethics board in directing that the opinion be made public so determines.

L.1991,c.29,s.17.

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## **40A:9-22.18 Response by county ethics board to written complaint**

The county ethics board, upon receipt of a signed written complaint by any

person alleging that the conduct of any local government officer or employee serving the county is in conflict with the county code of ethics or any financial disclosure requirements shall acknowledge receipt of the complaint within 30 days of receipt and initiate an investigation concerning the facts and circumstances set forth in the complaint. The ethics board shall make a determination as to whether the complaint is within its jurisdiction or frivolous or without any reasonable factual basis. If the ethics board shall conclude that the complaint is outside its jurisdiction, frivolous or without factual basis, it shall reduce that conclusion to writing and shall transmit a copy thereof to the complainant and to the local government officer or employee against whom the complaint was filed. Otherwise the ethics board shall notify the local government officer or employee against whom the complaint was filed of the nature of the complaint and the facts and circumstances set forth therein. The officer or employee shall have the opportunity to present the ethics board with any statement or information concerning the complaint which he wishes. Thereafter, if the ethics board determines that a reasonable doubt exists as to whether the local government officer or employee is in conflict with the county code of ethics or any financial disclosure requirements, it shall conduct a hearing in the manner prescribed by section 12 of this act, concerning the possible violation and any other facts and circumstances which may have come to its attention with respect to the conduct of the local government officer or employee. The ethics board shall render a decision as to whether the conduct of the officer or employee is in conflict with the county code of ethics or any financial disclosure requirements. This decision shall be made by no less than two-thirds of all members of the ethics board. If the ethics board determines that the officer or employee is in conflict with the code or any financial disclosure requirements, it may impose any penalties which it believes appropriate within the limitations of this act. A final decision of the ethics board may be appealed to the Local Finance Board within 30 days of the decision.

L.1991,c.29,s.18.

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#### **40A:9-22.19 Establishment of municipal ethics board**

a. Each municipality of the State may, by ordinance, establish a municipal ethics board consisting of six members who are residents of the municipality, at least two of whom shall be public members. The members of the ethics board shall be appointed by the governing body of the municipality. The members shall be chosen by virtue of their known and consistent reputation for integrity and their knowledge of local government affairs. No more than three members of the ethics board shall be of the same political party.

b. The members of the municipal ethics board shall annually elect a chairman from among the membership.

c. The members shall serve for a term of five years; except that of the members initially appointed, two of the public members shall be appointed to serve for a term of five years, one member shall be appointed to serve for a term of four years, and the remaining members shall be appointed to serve for a term of three years. Each member shall serve until his successor has been appointed and qualified. Any vacancy occurring in the membership of the ethics board shall be filled in the same manner as the original appointment for the unexpired term.

d. Members of the ethics board shall serve without compensation but shall be reimbursed by the municipality for necessary expenses incurred in the performance of their duties under this act.

#### **40A:9-22.20 Provision of offices to municipal ethics board**

a. The governing body of the municipality shall provide the municipal ethics board with offices for the conduct of its business and the preservation of its records, and shall supply equipment and supplies as may be necessary.

b. All necessary expenses incurred by the municipal ethics board and its members shall be paid, upon certification of the chairman, by the municipal treasurer within the limits of funds appropriated by the municipal governing body by annual or emergency appropriations for those purposes.

c. The municipal ethics board may appoint employees, including independent counsel, and clerical staff as are necessary to carry out the provisions of this act within the limits of funds appropriated by the municipal governing body for those purposes.

#### **40A:9-22.21 Municipal code of ethics established**

Within 90 days after the establishment of a municipal ethics board, that ethics board shall promulgate by resolution a municipal code of ethics for all local government officers and employees serving the municipality. Local government officers and employees serving a municipal independent authority shall be deemed to be serving the municipality for purposes of this act.

The municipal code of ethics so promulgated shall be either identical to the provisions set forth in section 5 of this act or more restrictive, but shall not be less restrictive. Within 15 days following the promulgation thereof, the municipal code of ethics, and a notice of the date of the public hearing to be held thereon, shall be published in at least one newspaper circulating within the municipality and shall be distributed to the municipal clerk and to the heads of the local government agencies serving the municipality for circulation among the local government officers and employees serving the municipality. The municipal ethics board shall hold a public hearing on the municipal code of ethics not less than 30 days following its promulgation at which any local government officer or employee serving the municipality and any other person wishing to be heard shall be permitted to testify. As a result of the hearing, the ethics board may amend or supplement the municipal code of ethics as it deems necessary. If the municipal code of ethics is not identical to the provisions set forth in section 5 of this act, the municipal ethics board shall thereafter submit the municipal code of ethics to the Local Finance Board for approval. The board shall approve or disapprove a municipal code of ethics within 60 days following receipt. If the board fails to act within that period, the municipal code of ethics shall be deemed approved. A municipal code of ethics requiring board approval shall take effect for all local government officers and employees serving the municipality 60 days after approval by the board. A municipal code of ethics identical to the provisions set forth in section 5 of this act shall take effect 10 days after the public hearing held thereon. The municipal ethics board shall forward a copy of the municipal code of ethics to the

municipal clerk and shall make copies of the municipal code of ethics available to local government officers and employees serving the municipality.

L.1991,c.29,s.21.

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#### **40A:9-22.22 Powers of municipal ethics board**

A municipal ethics board shall have the following powers:

a. To initiate, receive, hear and review complaints and hold hearings with regard to possible violations of the municipal code of ethics or financial disclosure requirements by local government officers or employees serving the municipality;

b. To issue subpoenas for the production of documents and the attendance of witnesses with respect to its investigation of any complaint or to the holding of a hearing;

c. To forward to the county prosecutor or the Attorney General or other governmental body any information concerning violations of the municipal code of ethics or financial disclosure requirements by local government officers or employees serving the municipality which may become the subject of criminal prosecution or which may warrant the institution of other legal proceedings by the Attorney General;

d. To render advisory opinions to local government officers or employees serving the municipality as to whether a given set of facts and circumstances would constitute a violation of any provision of the municipal code of ethics or financial disclosure requirements;

e. To enforce the provisions of the municipal code of ethics and financial disclosure requirements with regard to local government officers or employees serving the municipality and to impose penalties for the violation thereof as are authorized by this act; and

f. To adopt rules and regulations and to do other things as are necessary to implement the purposes of this act.

L.1991,c.29,s.22.

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#### **40A:9-22.23 Request for advisory opinion from municipal ethics board**

A local government officer or employee serving the municipality may request and obtain from the municipal ethics board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the municipal code of ethics or any financial disclosure requirements. Advisory opinions of the municipal ethics board shall not be made public, except when the ethics 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 officer or employee unless the ethics board in directing that the opinion be made public so determines.

L.1991,c.29,s.23.

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#### **40A:9-22.24 Response by municipal ethics board to written complaint**

The municipal ethics board, upon receipt of a signed written complaint by any person alleging that the conduct of any local government officer or employee serving the municipality is in conflict with the municipal code of ethics or financial disclosure requirements, shall acknowledge receipt of the complaint within 30 days of receipt and initiate an investigation concerning the facts and circumstances set forth in the complaint. The ethics board shall make a determination as to whether the complaint is within its jurisdiction or frivolous or without any reasonable factual basis. If the ethics board shall conclude that the complaint is outside its jurisdiction, frivolous or without factual basis, it shall reduce that conclusion to writing and shall transmit a copy thereof to the complainant and to the local government officer or employee against whom the complaint was filed. Otherwise the ethics board shall notify the local government officer or employee against whom the complaint was filed of the nature of the complaint and the facts and circumstances set forth therein. The officer or employee shall have the opportunity to present the ethics board with any statement or information concerning the complaint which he wishes. Thereafter, if the ethics board determines that a reasonable doubt exists as to whether the local government officer or employee is in conflict with the municipal code of ethics or any financial disclosure requirements, it shall conduct a hearing in the manner prescribed by section 12 of this act, concerning the possible violation and any other facts and circumstances which may have come to its attention with respect to the conduct of the local government officer or employee. The ethics board shall render a decision as to whether the conduct of the officer or employee is in conflict with the municipal code of ethics or any financial disclosure requirements. This decision shall be made by no less than two-thirds of all members of the ethics board.

If the ethics board determines that the officer or employee is in conflict with the code or any financial disclosure requirements, it may impose any penalties which it believes appropriate within the limitations of this act. A final decision of the ethics board may be appealed to the Local Finance Board within 30 days of the decision.

L.1991,c.29,s.24.

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#### **40A:9-22.25 Written materials to be preserved for at least five years**

All statements, complaints, requests or other written materials filed pursuant to this act, and any rulings, opinions, judgments, transcripts or other official papers prepared pursuant to this act shall be preserved for a period of at least five years from the date of filing or preparation, as the case may be.

L.1991,c.29,s.25.





# Report of the Governor's Local Government Ethics Task Force

## September, 2010

### Summary

The Governor's Local Government Ethics Task Force was established by Executive Order #119 signed on September 24, 2008 and its eleven members were appointed by Governor Jon Corzine on August 14, 2009. The Task Force was asked to continue its work by Governor Chris Christie at the beginning of his administration.

The Executive Order charged the Task Force to review the Local Government Ethics Law that was adopted in 1991 and not recently studied to consider the need for:

- clear and consistent standards
- the opportunity to have training
- an effective compliance program
- recommendations regarding whether enforcement responsibilities should be shifted from the Local Finance Board to another body.

In brief, the Task Force recommends the following key changes in the local government ethics law. The report discusses these recommendations in greater detail as well as related implementation issues.

- Provide a clear and concise Ethics Code, including a ban on all gifts except those considered trivial; no participation in matters related to family members, broadly defined; and, required recusal to avoid conflict of interest.
- Require training for all elected and appointed officials and staff in municipalities, counties, and local authorities.
- Improve the financial disclosure process by clarifying positions required to file, introducing electronic filing, and eliminating filing of statements with State government.

§ Institute disclosure of gifts to local governments by corporations, individuals and organizations.

- Upgrade fines to an upper limit of \$10,000 comparable to State Ethics Commission.
- Establish a Local Government Ethics Board for compliance and enforcement in place of the Local Finance Board.
- Expand public accountability and access to ethics information by web site and toll-free number.
- Eliminate the option for local ethics boards to manage compliance.

## **Background**

The Task Force met regularly in meetings held at least monthly, collected information through interviews and reports, conducted a public meeting at the League of Municipalities conference in Atlantic City on November 18, 2009, and organized itself into five sub-committees that shaped its work: code of ethics, training, financial disclosure, compliance, and public access. In the first months of the Task Force's work, it was advised by Deputy Chief Counsel Kay Henderson in the Corzine administration and in the Christie administration by Special Counsel Peter Tober.

In taking on the important charge of the Executive Order, the Task Force is fully aware that the citizens of the state have repeatedly responded in surveys that there is a high level of distrust of public officials exercising their responsibilities in the public interest rather than in their own self interest and that the indictment of officials of all levels of government, frequently at the local level, has contributed to undermining the public trust of public officials.

At the same time, the Task Force recognized that thousands of local government officials and employees were providing dedicated public service in honorable ways, were engaging in voluntary ethics training and were performing their duties in conducting the public's business in a responsible, open manner. The members of the Task Force expressed their purpose as providing a clear direction for supporting the honesty and integrity of local government officers and employees by ensuring consistency and continuity in the administration of the local government ethics law.

The Task Force drew significant and relevant information from the reforms in ethics administration in the Executive and Legislative branches that grew out of the Report of the Special Counsel by Justice Daniel J. O'Hern, Sr.(retired) and Professor Paula O. Franzese submitted to Acting Governor Richard J. Codey on March 14, 2005.

According to the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq., the statute applies to elected and appointed officials and staff in municipalities, counties, county colleges, and independent local authorities (municipal and county).

In its discussions and recommendations, the Task Force focused on the need to be relevant to the wide range of characteristics of local government: including diversity of size and complexity of those units of government; number of individuals who are elected and appointed as volunteers, the many different positions comprising local government staff (police, public works, administrative, part-time professional staff and positions in certified fields, etc), and, the concept of "community" that defines the work and public expectations of many local governments.

## **Discussion of Recommendations**

In making its recommendations, the Task Force is guided by the commitment to provide those working in local governments with the opportunity to be guided by a law that holds them to the highest ethical standards consistent with those now in effect at the state level in the executive,

legislative and judicial branches. Many leaders in the public sector are first introduced to government service at the local level and deserve to have a Code of Ethics for guidance and training in the Code that provides the basis for ethical conduct.

Also, the public they serve has the right to know what standards they can expect will be met, how they can determine that public leaders are avoiding conflicts of interest and how compliance with those standards is conducted.

The Task Force offers the following recommendations for amending the current law, for enforcement of the law as well as for training and compliance.

### **1- Expand and Clarify the Code of Ethics.**

The current law should be revised, reordered, and amended to include a clear and concise simplified Code of Ethics that is a statement local officials could embrace as their standard of conduct and by which they will be judged.

Specifically, the Code should include:

- no gift or anything beyond a trivial value shall be accepted by individuals covered by the Law and exclude reference in the current law to whether the gift “might directly or indirectly influence in the discharge of official duties.”

- employment, appointment and supervision of family members shall be a matter on which “no local government officer or employee shall act” in addition to those specified in the current Law. “Family” should be defined more broadly to be consistent with the State Conflict of Interest Law.

- formal recusal or abstention is required with no participation in discussion or vote to further define the statement in the current law that “no local government officer or employee shall act in his official capacity ...” that addresses the avoidance of a conflict of interest.

A Plain Language Guide especially designed for local government should be prepared in a manner similar to the Executive Branch guide which is “a clear and concise summary of the laws, regulations .... to promote ethical day-to-day decision making .....” The Guide, for example, should provide guidance on unsolicited gifts of trivial value.

### **2- Require Training.**

All individuals covered by the Local Government Ethics Law should be required to engage in ethics training within 90 days of assuming office and regularly thereafter. Currently, ethics training is not required, but there are many ways that training does take place voluntarily and in connection with required training for certification and service in such positions as Planning Board and Zoning Board membership.

Training should be available 1) on the Local Government Ethics web site to cover the key concepts in the Code of Ethics and 2) in person to provide a venue to discuss ethical issues. (See the attached report of sub-committee on training ) All formal ethics training should have a common curriculum reviewed and approved by the Office of Local Government Ethics.

### **3- Improve Financial Disclosure.**

The annual requirement to file a financial disclosure form should be modernized in its administration and linked to the Code of Ethics to emphasize disclosure as a vehicle for the public to access whether local government officials are exercising their official duties without a conflict of interest. Currently, approximately 35,000 individuals file disclosure statements annually.

The process for filing should be streamlined with a view to electronic administration. Initially, forms should be distributed to local governments electronically, not paper forms distributed by mail. As resources are available, completing and filing them should be done electronically.

The law should clarify the positions in local government that require filing the financial disclosure statement. These positions and the individuals who hold them would constitute a roster to be used for monitoring compliance, showing whether individuals have filed a form and the date on which it was filed.

Only the completed roster should be filed with the State's Local Government Ethics administration rather than a copy of each required financial disclosure statement. The public record of the completed roster and the financial disclosure statements should be maintained by the municipal/county clerk as a public record file.

In order to improve compliance, local government officials should be informed that willful failure to file a completed financial disclosure form would result in a per diem fine and ultimately forfeiture of office for employees and appointees.

A new disclosure practice is recommended to recognize that local governments receive gifts from individuals, organizations and businesses for public purposes. It is recommended that local governments maintain a public record easily available in which such gifts are posted when they are received and specifying the amount/value, purpose and the local government entity that utilized the gifts/contributions.

### **4- Upgrade Compliance and Enforcement.**

Penalties for violation of the Local Government Ethics Law and its Code of Ethics should include a range from reprimand to fines.

The current fines should be revised to correspond to the upper limit of the State Conflict of Interest Law, specifically from not more than \$500 to not more than \$10,000.

The compliance jurisdiction should be moved from the Local Finance Board which has experienced increased responsibilities for review and approval of applications concerning the fiscal integrity of all local governments to a new Local Government Ethics Board.

The Commission made up of seven members, including its chair and vice chair, should be appointed by the Governor for four-year overlapping terms similar to the State Ethics Board. A majority of members should have experience in local government but no longer be actively serving and the initial Board should include former members of the Local Finance Board. A minority of members should have experience at other levels of government or in the private or non-profit sector.

Compliance with the Local Government Ethics Law should be furthered in two ways: 1) by creation of a local government ethics adviser at the State level available to individuals in local government with whom to raise questions, confer on ethical issues and receive advice, and 2) by the appointment of an ethics liaison in each local government unit to act as a resource in implementing the Local Government Ethics Law. The second position is similar to the Ethics Liaison Officer (ELO) in each of the departments of the Executive Branch or the ethics consultant in the Office of Legislative Services available to the members of the Legislature.

Compliance with the Local Government Ethics Law should be solely the responsibility of the Local Government Ethics Board in the interest of professional staff administering compliance issues and providing consistency in the handling of cases. Therefore, it is recommended that the current practice of providing municipal and county governments the option of establishing their own ethics boards should be phased out with the full implementation of a revised law.

#### **5- Expand Public Accountability and Access.**

Members of the public and more specifically, the constituents of the local governments deserve to have access to information on a web site about compliance with the Local Government Ethics Law including the Code of Ethics, the Plain Language Guide, information about the financial disclosure statement and how to access completed disclosure forms, how to file a complaint about an ethics violation, and general explanations of opinions rendered by the Local Government Ethics Board.

Currently, the Local Government Ethics Law web site is part of the Department of Community Affairs, Division of Local Government Services website. A general search of the State web site connects a person only to the State Ethics Commission if information about ethics is sought.

There is no toll-free number that can be called for information about local government ethics as there is for the State Ethics Commission and for the Joint Ethics Commission of the Legislature.

Obviously, better communications in all ways and especially online can serve to build understanding and support for ethical standards and the administration that supports them. All

aspects of information, counseling and website content should parallel that of the State Ethics Commission.

## **6- Enhance Implementation.**

The members of the Task Force have made recommendations for initiatives and changes that address the Executive Order and reviewed how the administration of a reformed local government ethics law could achieve the recommendations in a relatively brief period of time and with reasonable resources.

The experiences and lessons in administering the ethics reforms of New Jersey's executive, legislative and judicial branches of government were considered. Neighboring states also provide models such as Connecticut, where local government ethics is administered in a separate State agency, or Pennsylvania and Massachusetts where local government ethics administration is integrated into a statewide ethics administration. This latter approach was recommended in the Special Counsel's report in order to provide for a uniform, consistent approach to ethical practices by all public officials in the State. While a common code of ethics is provided in the State Conflict of Interest Law for the executive and legislative branches, implementation and compliance is separate for each.

In either case, whether a separate administration for local governments or an integrated approach, adequate staff and new materials and procedures will be required. In order to have a more effective and responsive local government ethics administration in New Jersey,

Maintaining the administration of the Local Government Ethics Law in the Department of Community Affairs, under the director of the Division of Local Government Services, would provide a staff with expertise and visibility in local government practices, one that is familiar to local government officials. The Division could draw on, as appropriate, the reformed State Ethics Commission and its experiences in developing and administering a plain language guide, training programs and an electronic financial disclosure process.

The integrated version of ethics administration would locate the Local Government Ethics Board and its responsibilities within the structure of the State Ethics Commission, requiring some additional staff specifically experienced with local government to implement ethics initiatives and adapt materials and practices in place for the executive branch to local governments. This initiative would provide one source of ethics administration and ease in public accessibility.

Most Task Force members recommend maintaining the local government ethics administration with the Department of Community Affairs while a smaller number recommend integration in the State Ethics Commission.

## **7- Consideration of Other Ethics Administration Issues.**

In the spirit of consistency and clarity, the Task Force recommends that consideration be given

to whether the current ethics laws and practices governing school boards and school administrators should be integrated with, and consistent with, the administration of the Local Government Ethics Law since many officials, volunteers and staff are working at a similar level of government and with similar constituencies.

The Task Force also recommends that the administration of ethics laws for county colleges be moved from the responsibility of the Local Government Ethics Office to the State Ethics Commission to be administered by its unit on state colleges and universities in order to improve consistency of ethics administration in higher education.

## **Conclusion**

The members of the Governor's Local Government Ethics Task Force respectfully submit the results of its study and its recommendations in fulfillment of the Executive Order creating the Task Force. We do so with appreciation for the opportunity to contribute to the important goal of restoring public trust and confidence in the governments of New Jersey and providing individuals in all parts of the state and all parts of local government with shared high ethical standards for public service and the support and guidance to achieve those standards.

While our work is complete with this report, we are most willing to continue to be of service in achieving the initiatives we have advocated.

Ingrid W. Reed, chair. Virginia Betteridge, Herbert S. Friend, Robert S. Garrison.  
William J. Kearns, Jr., Esq., Collen Mahr, Patricia Parkin McNamara, Richard J. Sheola,  
Stuart A. Tucker (through Nov.2009), Richard F. Turner. Matthew U. Watkins.

### Attachments:

Executive Order #119

Task Force Members Brief Biographical Information

Report of Sub-committee on Training

Members of the Governor's Local Government Ethics Task Force

Virginia Betteridge,  
Mayor, Borough of Runnemede; President, Camden County Mayors' Association

Herbert S. Friend

Retired Superior Court Judge; former vice-chair of Joint Legislative Committee on Ethical Standards; Special Ethics Master by Appointment of N.J. Supreme Court

Robert S. Garrison

Director of the Laborers Eastern Region Political Education Fund and Administrator of the N.J. State Laborer's Political Action Committee; Of Counsel with Florio Perrucci Steinhardt & Fader; member, Union County Planning Board.

William J. Kearns, Jr., Esq.

General Counsel, N.J. League of Municipalities; former Councilman and Mayor; frequent lecturer on local government ethics

Collen Mahr

Mayor of Borough of Fanwood; Past President of the New Jersey Conference of Mayors

Patricia Parkin McNamara

Executive Secretary, Local Finance Board; Manager, Local Government Ethics Unit, N.J. Department of Community Affairs

Ingrid W. Reed

Recently retired director of the New Jersey Project, Eagleton Institute of Politics, Rutgers University.

Richard J. Sheola

Township Administrator, Chief Financial Officer and Purchasing Agent for the Township of Long Hill; former adjunct faculty in Public Administration and Finance at several N.J. colleges and universities.

Stuart A. Tucker (through Nov.2009)

Partner, Szaferman, Lakind, Blumstein & Blader, P.C.; member, N.J. Supreme Court District VII Ethics Committee.

Richard F. Turner

Mayor, Township of Weehawken; Commissioner/Vice Chairman of N.J. Local Finance Board for ten years; Chairman of the North Hudson Regional Fire & Rescue Board.

Matthew U. Watkins

Township Manager, Township of South Brunswick; Commissioner N.J. Public Employment Relations Commission

***TASK FORCE ON LOCAL GOVERNMENT ETHICS  
REPORT  
FROM THE SUBCOMMITTEE ON TRAINING***

The Task Force Sub-Committee on Training (Sub-Committee) outlines the following recommendation for mandatory ethics training of municipal elected, appointed officials and certain employees in order to improve overall local government ethics requirements.



**Training Requirements:**

Ethics training should be mandatory for all local government officers as defined in NJSA 40A:9-22.3(g). This includes elected officials, appointed officials and government officials/officers who are defined as supervisory according to civil service. These officials required to receive training every other year as defined below:

The Sub-Committee recommends that all public employees be encouraged to receive training in ethics every two years.

**Mandatory Training Deadlines:**

Mandatory training is required of newly elected or appointed officials within 180 days of their election or appointment. Please note that this is not from the date of their taking office but from the time of their appointment. This would allow for elected officials to take advantage of the New Jersey State League of Municipality programs in November.

For government officers, they shall mandatory training within 90 days of their appointment. Any government officer who has received training within the previous calendar year shall have met their requirements herein.

Mandatory training at the start of the term shall be done in a live seminar format and not electronically.

**Electronic On-Line Training:**

A streaming media presentation should be made available to all local government in order to fulfill the requirements of mandatory training. Streaming media can be annually updated and free of charge (Suggest a video recording the League of Municipalities annual Ethics training given at the annual convention).

The State should establish an online presentation with a verification component. The programming for verification is readily available and should be utilized in this opportunity in order to verify that a public official has received training via streaming media.

**Mandatory Training Update:**

Those government officials who are mandated to receive training shall do so within the guidelines stated above. Further, those effected municipal officials shall be mandated to receive training every two years. This can be accomplished through the various seminar programs or online training.

Live seminar training is required once every term of office, or every four years which ever is less.

**Training Resources:**

Training may be made available from a number of sources including Rutgers University, New Jersey League of Municipalities, the New Jersey Association of Counties, the New Jersey Municipal Clerks Association or other associations as approved by the DLGS.

**Minimum Topics for Training:**

At a minimum, a presentation must cover these four topics.

1. Review of the Local Governments Ethics Law (NJSA 40A:9-22)
2. Criminal Statutes on Ethics violations
3. Practical Application and Group Discussion of Ethics Violations or Practical Application
4. Discussion & Presentation of Financial Disclosure Form and how to complete it.

**Costs:**

Given the availability of seminars and on-line training capabilities, the cost of this mandated training should be minimal and not subject to the state mandate/state pay requirements.

**State of New Jersey  
Executive Order # 119  
Governor Jon S. Corzine**

WHEREAS, it is a priority of this administration to restore public trust and confidence in government; and

WHEREAS, it is imperative that public officials at all levels of government earn and maintain the confidence of the people they represent; and

WHEREAS, those serving in State, county, municipal, and other local government units hold positions of public trust that require adherence to the highest ethical standards of honesty and integrity; and

WHEREAS, public officials should not engage in any conduct that violates the public trust or creates an appearance of impropriety; and

WHEREAS, the current local government ethics laws were first adopted in 1991, and since that time there has not been a thorough review of the efficacy of those laws, nor any comprehensive study of the need for amendments thereto; and

WHEREAS, to the extent appropriate, ethical standards should be applied consistently to similarly situated officials in order to promote respect for those standards and provide for their enforcement; and

WHEREAS, persons serving in government should have the benefit of clear and consistent standards, ample training opportunities, and an effective compliance program to assist in guiding their conduct; and

WHEREAS, it is appropriate to create a body with experience and expertise in local governance, local government ethics, and the procurement of goods and services by local units to study the experience of local units under the local government ethics laws and make recommendations regarding amendments to those laws, including whether enforcement responsibility should be shifted from the Local Finance Board to a different body solely focused on government ethics;

NOW, THEREFORE, I, JON S. CORZINE, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1

There is hereby established the Governor’s Local Government Ethics Task Force (“Task Force”).

2

The Task Force shall be composed of 11 individuals with expertise in local governance, local government ethics, and the procurement of goods and services by local units. Members will be appointed by and serve at the pleasure of the Governor. The Task Force membership shall include one individual who shall be appointed by the Governor upon the recommendation of the President of the Senate, one individual who shall be appointed by the Governor upon the recommendation of the Senate Minority Leader, one individual who shall be appointed by the Governor upon the recommendation of the Speaker of the Assembly, and one individual who shall be appointed by the Governor upon the recommendation of the Assembly Minority Leader. The Governor shall select from among all of the members the chairperson of the Task Force. The members shall serve without compensation.

3

The Task Force shall organize as soon as practicable after the appointment of a majority of its members.

4

The Task Force is charged with studying and making recommendations regarding the need for amendments to the local government ethics laws and whether enforcement responsibility should be shifted from the Local Finance Board to a different body that is solely focused on government ethics. The Task Force also shall



<http://www.nj.gov/State of New Jersey>  
**Executive Order # 119**

Filename:                  Localethictaskforcereport  
Directory:                 C:\Documents and Settings\trnlofo.GOV\My Documents  
Template:                  C:\Documents and Settings\trnlofo.GOV\Application  
                            Data\Microsoft\Templates\Normal.dotm  
Title:  
Subject:  
Author:                    Marvin  
Keywords:  
Comments:  
Creation Date:             10/1/2010 10:07:00 AM  
Change Number:            1  
Last Saved On:  
Last Saved By:            Ingrid W. Reed  
Total Editing Time:       0 Minutes  
Last Printed On:           10/1/2010 10:07:00 AM  
As of Last Complete Printing  
                            Number of Pages:          12  
                            Number of Words:         4,247 (approx.)  
                            Number of Characters:    24,214 (approx.)

Ethics and Conflicts of Interest



**Ethics**

**NJ League of Municipalities**  
April, 2012

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**William J. Kearns, Jr.**  
Kearns, Reale & Kearns  
Willingboro, New Jersey

General Counsel, New Jersey League of Municipalities  
Past President, International Municipal Lawyers Association  
Member, Governor's Task Force on the Local Government Ethics Law

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**GOOD MORNING!!**



If people were meant to pop  
out of bed we'd  
all sleep  
in toasters

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**PLEASE**



**I WANT YOU  
TO TURN OFF  
YOUR CELL PHONE**

**THANK YOU**

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**Ethics and Conflicts of Interest**



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**Ethics and Conflicts of Interest**



**Henry Clay**  
Secretary of State  
Member of Congress  
United States Senator  
Speech at Ashland, KY (1829)

Government is a trust, and the officers of the government are trustees; and both the trust and the trustees are created for the benefit of the people.

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## Ethics and Conflicts of Interest

### Ethical Conduct

- Ethical conduct is more than merely meeting the standards required by law.
- Ethical conduct means doing the *right* thing simply because it is the right thing to do.
- Violating legal standards for conduct means that legal sanctions can be imposed.

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## Ethics and Conflicts of Interest



We're all SHOCKED, SHOCKED to learn that there has been political influence in the award of contracts.

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We think of ourselves as targets ..  
Because ..... We are .... Officially

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### Ethics and Conflicts of Interest

#### Local Government Ethics Law

- Establishes minimum standards of conduct.
- Requires financial disclosure statements of certain officials.
- Enforced by the Local Finance Board.
- Local Ethics Boards allowed.
- Sanctions include fines.

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### Ethics and Conflicts of Interest

#### Standards of Conduct

- 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;

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### Ethics and Conflicts of Interest

#### Standards of Conduct Authority Members

- No independent local authority shall, for one year after the termination of office of a member of that authority:
- (1) award any contract which is not publicly bid to a former member;
- (2) allow a former member to represent, appear for or negotiate on behalf of any other party before that authority;
- (3) employ for compensation, except pursuant to open competitive examination (civil service) any former member of that authority.
- The restrictions also apply to any business organization in which the former authority member holds an interest.

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### Ethics and Conflicts of Interest

#### Standards of Conduct

- 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

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### Ethics and Conflicts of Interest

#### Standards of Conduct

- 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

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### Ethics and Conflicts of Interest

#### Is voting a 1<sup>st</sup> Amendment Issue?

“But how can it be that restrictions upon legislators’ voting are not restrictions upon legislators’ protected speech? The answer is that a legislator’s vote is the commitment of his apportioned share of the legislature’s power to the passage or defeat of a particular proposal. The legislative power thus committed is not personal to the legislator but belongs to the people; the legislator has no personal right to it.”

United States Supreme Court, June 13, 2011  
*Nevada Commission on Ethics v Carrigan*,  
\_\_\_\_ US \_\_\_\_ (2011)

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### Ethics and Conflicts of Interest

#### Standards of Conduct

- 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

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### Ethics and Conflicts of Interest

#### Standards of Conduct

- 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 it 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 ... an announced candidate for elective public office, if the local government officer has no reason to believe that the contribution ... was given with the intent to influence the local government officer in the discharge of his official duties

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### Ethics and Conflicts of Interest

#### Standards of Conduct

- Insider Trading - Local Government Version
- No local government officer or employee shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated

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### Ethics and Conflicts of Interest

#### Standards of Conduct

- 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

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### Ethics and Conflicts of Interest

#### Standards of Conduct

- 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

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### Ethics and Conflicts of Interest

#### Standards of Conduct

- No elected local government officer shall be prohibited from making an inquiry for information on behalf of a constituent .....
- Provided that no fee, reward or **other thing of value** is promised to, given to or accepted by the officer or a member of his immediate family, whether directly or indirectly

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### Ethics and Conflicts of Interest

#### Standards of Conduct

- Nothing shall prohibit any local government officer or employee, or members of his immediate family, from representing himself, or themselves, in negotiations or proceedings concerning his, or their, own interests

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### Ethics and Conflicts of Interest

#### Financial Disclosure

- Local government officers shall annually file a financial disclosure statement.
- Due each April 30th
- File with the Municipal Clerk
- It is a Public Record
- **Expect financial sanctions for failure to file on time, effective in 2011.**

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### Ethics and Conflicts of Interest

#### Local Government Officer

- ... compensated or not ... part-time or full-time
  - Elected to any local office
  - On a body that can enact ordinances, approve development applications or grant zoning variances;
  - A member of an independent municipal, county or regional authority
  - A managerial executive or confidential employee of a local government agency ... but shall not mean any employee of a school district or member of a school board;

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### Ethics and Conflicts of Interest

#### Financial Disclosure

- Each **source** of income, earned or unearned, exceeding \$2,000
- received by the local government officer or a member of his immediate family during the preceding calendar year.
- Individual client fees, receipts or commissions received through a business organization need not be separately reported as sources of income.

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### Ethics and Conflicts of Interest

#### Financial Disclosure

- A publicly traded security need not be reported unless the officer or member of his immediate family has an interest in the business organization
- "Interest" means the ownership or control of more than 10% of the profits, assets or stock of a business organization but shall not include the control of assets in a nonprofit entity or labor union

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### Ethics and Conflicts of Interest

#### Financial Disclosure

- Each source of fees and honoraria having an aggregate amount exceeding \$250 from any single source for personal appearances, speeches or writings received by the local government officer or a member of his immediate family during the preceding calendar year

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**Ethics and Conflicts of Interest**

**Financial Disclosure**

- Each source of gifts, reimbursements or prepaid expenses having an aggregate value exceeding \$400 ... excluding relatives ... received by the officer or a member of his immediate family during the preceding calendar year

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**Ethics and Conflicts of Interest**

**Financial Disclosure**

- The name and address of all business organizations in which the local government officer or a member of his immediate family had an interest during the preceding calendar year

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**Ethics and Conflicts of Interest**

**Financial Disclosure**

- The address and brief description of all real property in the State in which the officer or a member of his immediate family held an interest during the preceding calendar year.

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Ethics and Conflicts of Interest

Penalties

Elected Officer or Employee

- An elected local government officer or employee found guilty ... shall be fined not less than \$100.00 nor more than \$500.00
- Ethics Task Force has recommended that the range of penalties be increased, to match the State Ethics Law \$10,000 maximum

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Ethics and Conflicts of Interest

Penalties

Appointed Official or Employee

- An appointed officer or employee found guilty ... shall be fined not less than \$100.00 nor more than \$500.00;
- The board shall report its findings to the office or agency having the power of removal or discipline of the appointed officer or employee and may recommend that disciplinary action be taken

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Ethics and Conflicts of Interest

Disciplinary Action

- The finding ... that an appointed officer or employee is guilty ... shall be sufficient cause for his removal, suspension, demotion or other disciplinary action by the officer or agency having the power of removal or discipline

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### Ethics and Conflicts of Interest

#### Criminal Code

N.J.S.A. 2C:27-10

- A person commits a crime if the person, as a public servant:
- directly or indirectly, **knowingly** solicits, accepts or agrees to accept any benefit, whether the benefit inures to the public servant or another person, to influence the performance of an official duty or to commit a violation of an official duty.

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### Ethics and Conflicts of Interest

#### Criminal Code

A public servant commits a crime if:

- Under color of office and in connection with any official act ... the public servant directly or indirectly knowingly receives any benefit – whether to the public servant or another person – to influence the performance of an official duty or to commit a violation of an official duty

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### Ethics and Conflicts of Interest

#### Criminal Code

A crime of the second degree, except that if the benefit solicited, accepted or agreed to be accepted or received is of a value of \$200.00 or less, any offense .... Is a crime of the third degree.

N.J.S.A. 2C:27-10 e

So ..... the crime exists at all levels, but the potential penalty is less if the value was under \$200.00

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### Ethics and Conflicts of Interest

#### Is it an improper benefit?

benefit includes: any benefit from or by reason of a contract or agreement for goods, property or services if the contract or agreement is awarded, made or paid by the branch, subdivision or agency of the government that employs the public servant

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### Ethics and Conflicts of Interest

#### Gifts

N.J.S.A. 2C:27-10 d provides exceptions for:

- ❖ Fees prescribed by law ... or any other benefit to which the public servant is otherwise legally entitled .. If the benefit is not bartered for another benefit to influence the performance of an official duty
- ❖ Gifts or other benefits conferred on account of kinship or other personal, professional or business relationship independent of the official status of the recipient
- ❖ Trivial benefits the receipt of which involve no risk that the public servant would perform official duties in a biased or partial manner

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### Ethics and Conflicts of Interest

#### Gifts

What constitutes a *“trivial benefit”* ?

- Under Federal law, the standard for Federal employees is set at \$20.00 or \$50.00 or \$300.00.
- Under NJ law – there is no guidance

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## Ethics and Conflicts of Interest

### State Policy

In accordance with the New Jersey Conflicts of Interest Law, **any gift or other item of value including floral and food items** by a person or entity with whom a State employee **has had contact in his/her official capacity must be declined**, and the offer must be reported immediately and returned to ... [the] ... , Department Ethics Liaison Officer

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## Ethical Considerations

### Situation # 1

Employee places an order for office supplies, and the supplier provides a "gift" based on the size of the order.

The employee receives the "gift" and keeps it, because it was not part of the supplies ordered for the municipality.

Is that improper?

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## Ethical Considerations

### Situation # 2

After the meeting several of the governing body members and the attorney and the engineer to to the local diner for coffee and a hamburger.

At the end of the evening, the attorney or the engineer picks up the check.

Is that trivial?

Does that influence the public officials?

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## Ethical Considerations

### Situation # 3

One of the professionals employed by the municipality sends gifts to each of the elected officials, to the Administrator, to the Clerk, to the Zoning Officer .... Etc.

- Is that unethical?
- Does it depend on the value?
- Pocket calendar?
- Fruit basket?
- Liquor?
- Playoff tickets?

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## Ethical Considerations

### Situation # 4

One of the town officials asks two Public Works employees to work on Saturday to cut his lawn .....

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## Ethical Considerations

### Situation # 4

One of the town officials asks two Public Works employees to work on Saturday to cut his lawn .....

.... And offers to pay them for the work

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### Ethical Considerations

#### Situation # 4

One of the town officials asks two Public Works employees to work on Saturday to cut his lawn .....

.... And offers to pay them for the work

.... The two employees have their own "lawn service"

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### Ethical Considerations

#### Situation # 4

One of the town officials asks two Public Works employees to work on Saturday to cut his lawn .....

.... And offers to pay them for the work

.... The two employees have their own "lawn service"

.... How do you avoid the "appearance" of impropriety

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### Ethical Considerations

#### Situation # 5

The Developer explains that what they propose for your community is similar to their development in ThatTown and that they would like to arrange for a bus to take members of the staff, the governing body and the Planning Board to see the ThatTown project. They will host lunch for the group in the Community Center in ThatTown.

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## Ethical Considerations

### Situation # 6

The Developer explains that what they propose for your community is similar to their development in Denver, Colorado, and that they would like to arrange for you, two members of the governing body and three members of the Planning Board to see the Denver project. They suggest an overnight trip and offer to cover the air fare, hotel and meals.

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## Ethical Considerations

### Situation # 7

The Developer explains that what they propose for your community is similar to their development near Orlando, Florida, and that they would like to arrange for you, two members of the governing body and three members of the Planning Board to see the project. They suggest a weekend trip and offer to cover the air fare, accommodations at one of the Disneyworld Hotels and meals. They will host a bus tour to the development and will host a dinner to be held at a restaurant at Epcot Center on Saturday evening.

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## Ethical Considerations

### Situation # 8



- The Developer calls and thanks you for all of your cooperation during the process of obtaining the necessary approvals. Now that the application process is completed and permits issued, he remembered that your son was a big baseball fan. They offer you two tickets for the Phillies-Yankees-Mets (team of your choice) game on Saturday night, noting that they are GREAT seats.
- Any difference if it was for a Minor League game?
- How about a coupon for a coffee at a WaWa?

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## Ethical Considerations

### Situation # 9



- The Developer is about to have the Grand Opening of model homes and invites the Mayor, the Council and all of the employees to come for a private reception the evening before the Grand Opening .....
- The Developer invites the Code Enforcement officers to lunch to thank them for their prompt responses to inspection request.

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## Ethical Considerations

### Situation # 10

- A contractor who does work for the municipality mentions to you that he was contacted by Council Member A who wants some work done on his house and who said "I expect you to give me a good price, because you know that I have to vote on your contracts with the town."

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## Ethical Considerations

### Situation # 10

- A contractor who does work for the municipality mentions to you that he was contacted by Council Member A who wants some work done on his house and who said "I expect you to give me a good price, because you know that I have to vote on your contracts with the town."
- When told by the Municipal Clerk that he cannot do that, he says, "What's the sense in being on the Council if I don't get some benefits?"

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## Ethical Considerations

### Situation # 10

- A contractor who does work for the municipality mentions to you that he was contacted by Council Member A who wants some work done on his house and who said "I expect you to give me a good price, because you know that I have to vote on your contracts with the town."
- Is the Council Member corrupt or just stupid?

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## Ethical Considerations

### Situation # 10

- A contractor who does work for the municipality mentions to you that he was contacted by Council Member A who wants some work done on his house and who said "I expect you to give me a good price, because you know that I have to vote on your contracts with the town."
- What do you do?
- Do you have any obligation to report it to anyone?

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## Ethical Considerations

### Situation # 11

- A contractor who frequently interacts with the Construction office drops off a plate of cookies .....



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## Ethical Considerations

### Situation # 12

- The Council has to act on the appointment to the Planning Board. Two members want to reappoint the incumbent member. Two members oppose his reappointment.
- The 5<sup>th</sup> Council member is the spouse of the Planning Board member.
- She votes for his reappointment and argues that it is a reappointment, not a new appointment and that it is necessary for her to vote to avoid a deadlock.

*Shapiro v Mertz*, 368 NJ Super 46 (App Div, 2004)  
[Moorestown Ethics Board]

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## Ethical Considerations

### Situation # 13

- Township Council is voting on funding to refurbish athletic fields with artificial turf. It is very controversial. A question is raised about one council member whose business is providing training and equipment for Lacrosse. The Township Attorney says that it is not a conflict. He votes and the appropriation passes 3-2.
- An ethics complaint is filed.
- How does the ethics board act on the complaint?

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## Ethical Considerations

### Situation # 14

The town owns a wood chipper that is used infrequently, but is critical after major storms. A local private school asks if it can "borrow" the wood chipper on a particular day when they are having a clean up day on their property?

What do you say?

What if they want the operator too?

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### Ethical Considerations

#### Situation # 15

The local Scout Troop wants to do a project to clean up the local park and the stream that runs through the park and the adjacent property of a local church. They ask if the town can provide trucks to cart away the debris.

It will be on a weekend, so there will be overtime costs.

What do you say?

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### Ethical Considerations

#### Situation # 16

The Mayor and two council members ask if you can make sure that they get plowed out promptly when the snow storm hits. They mean that they want you to clear their driveways as well as the street.

How do you handle the request?

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### Ethical Considerations

#### Situation # 17

The local convenience store offers to provide coffee and sandwiches for the public works crews and the police officers who are working during the storm.

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## Ethical Considerations

### Situation # 17

The local convenience store offers to provide coffee and sandwiches for the public works crews and the police officers who are working during the storm.

In order to provide that service, however, his parking lot will need to be cleared.

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## Ethical Considerations

### Situation # 17

The local convenience store offers to provide coffee and sandwiches for the public works crews and the police officers who are working during the storm.

In order to provide that service, however, his parking lot will need to be cleared.

Can your crews do that as they come in for the coffee and sandwiches

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## Ethical Considerations

### Situation # 18

You're building a patio in your back yard and some of your buddies in the Department have offered to help you get the patio built. You're not paying anyone, just providing beer and sandwiches.

It would go much faster if you had a backhoe.

Well, the town has a couple of backhoes. They're not being used. How about if you just use one for a couple of hours.

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### What's New With Ethics

Times are changing .....

Recommendations from the  
Governor's Task Force  
on the  
Local Government Ethics Law  
September, 2010

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### What's New With Ethics

#### Task Force Recommendations

- Provide a clear and concise ethics code with a ban on all gifts except those considered trivial with clear guidance on what constitutes "trivial";
- Eliminate current language which requires a finding that the gift might directly or indirectly influence in the discharge of official duties;

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### What's New With Ethics

#### Task Force Recommendations

- No participation in matters involving family members, with a broad, inclusive definition of family in place of current language that defines family as a spouse or dependant residing with the official;
- Require recusal from participation and discussion, not just abstention from voting

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### What's New With Ethics

#### Task Force Recommendations

- Improve financial disclosure by clearly defining those who are required to file;
- Require public disclosure of gifts to the public entity by corporations, businesses and individuals

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### What's New With Ethics

#### Task Force Recommendations

- Training should be mandatory for all public employees, including all elected and appointed officials
- Newly elected or appointed officials should be required to obtain the ethics training within 90 days after taking office
- The training should be available from a number of sources (Rutgers, League, professional associations, etc), including "in house" training by an experienced municipal attorney, following an approved guideline

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### What's New With Ethics

#### Task Force Recommendations

- While electronic, on-line training is a potential, the preference is for some actual in-person participation as more effective
- Training would be every 2 years, with in-person programs at least every 4 years
- Newly elected officials would be required to have ethics training between the date of election and 90 days after taking office

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### What's New With Ethics

#### Task Force Recommendations

- failure to file financial disclosure on time would result in a per diem fine;
- willful failure to file could result in forfeiture of position

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### What's New With Ethics

#### Task Force Recommendations

- Enforcement by Local Government Ethics Board (in place of Local Finance Board);
- Seven members appointed by the Governor to four-year overlapping terms, a majority of whom should have prior local government experience, but no longer actively serving in local government
- Establish a local government ethics advisor at the State level to provide guidance and advice on request;
- Have an Ethics liaison designated in each local government unit; which could be an existing officer or employee

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### What's New With Ethics

#### Task Force Recommendations

- Eliminate local ethics boards in order to achieve consistency in enforcement;
- Increase potential penalties to \$10,000, in keeping with the State Ethics Code; eliminate the \$100 minimum fine in order to allow for reprimand or censure;
- Expand public accountability and access to information and public access to easily file complaints;
- Merge school ethics standards and enforcement with local government ethics standards and enforcement

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## What's New With Ethics

### Implementation

- The Local Government CHECKLIST includes a question asking whether the local government provides ethics training for its officials and employees

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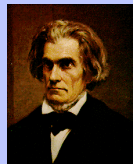
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## Ethics and Conflicts of Interest

### Ethical Conduct

“The very essence of a free government consists in considering offices as public trusts, bestowed for the good of the country, and not for the benefit of an individual or a party.”

**John C. Calhoun**  
*Speech*, February 13, 1835  
 Vice President of the US  
 Secretary of State  
 Secretary of War  
 United States Senator  
 Member of Congress




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## Ethics and Conflicts of Interest

### I'm not worried

Everybody does it .....

I won't get caught .....

The public won't pay attention .....

I'm too important to prosecute .....

It doesn't just happen to the "little guy" .....

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### Ethics and Conflicts of Interest

#### Rod Blagojevich

Governor of Illinois, he tried to "sell" an appointment to fill a US Senate vacancy.

Impeached  
Tried and Convicted  
Now living in the  
Federal Correctional Institution  
Terre Haute, Indiana  
6 1/2 years



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### Ethics and Conflicts of Interest

#### Corey Kemp

Former Philadelphia City Treasurer  
After conviction on 27 counts of corruption related charges  
*Philadelphia Inquirer*, May 15, 2005  
[On July 19, 2005, Kemp was sentenced to 10-years in prison]



*I wish I didn't do some of the things or go to some of those places because my life isn't worth a trip to the Super Bowl. My life ain't worth a lunch.*

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### Ethics and Conflicts of Interest

#### Mark Civarella

Luzerne (PA) County President Judge

Involved in sentencing juveniles to serve time for minor offenses in private jail facilities in return for \$2.8 million in kickbacks.

Found Guilty of Racketeering  
Resigned from office  
Disbarred  
Sentenced to 28-years in prison  
  
Hundreds of juvenile sentences  
OVERTURNED



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### Ethics and Conflicts of Interest

#### Zheng Xiaoyu

Former Commissioner  
China's Food and Drug Administration  
Convicted of taking \$850,000 in bribes from  
companies seeking approval for medicines.



Convicted - May 29, 2007  
Executed - July 10, 2007

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### Ethics and Conflicts of Interest

#### Bill's Guideline Number 1

- If your worst political enemy found out what you did and raised the issue at a public meeting, would you be embarrassed in explaining your conduct and in trying to justify your actions. If so, then don't do it in the first place.

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### Ethics and Conflicts of Interest

#### Bill's Guideline Number 2

- If your mother found out what you did, would you find it embarrassing to explain to your mother why you did it? If so, then don't do it in the first place.

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Ethics and Conflicts of Interest

Bill's Guideline Number 3

- When you get caught are you going to find it difficult to explain to your family - especially your children - why you have been taken from your home in handcuffs?

[Note: You will be caught, no matter how careful or secretive you think that you have been.]

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Ethics and Conflicts of Interest

Bill's Guideline Number 4

- Do you really think that you would have received that gift if you were not in an official position able to influence something for the gift giver? If you would not have received the gift, except for your official position ..... then you probably should not accept it.

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Ethics and Conflicts of Interest

*Never suffer a thought to be harbored in your mind which you would not avow openly. When tempted to do anything in secret, ask yourself if you would do it in public. If you would not, be sure it is wrong.*

**Thomas Jefferson**  
Letter to his Grandson,  
Francis Eppes, Age 14  
Monticello, May 21, 1816




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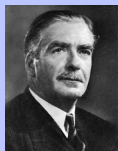
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### Ethics and Conflicts of Interest

Corruption has never been compulsory.



**Anthony Eden**

(1897-1977)  
Prime Minister of the United Kingdom  
(1955-1957)

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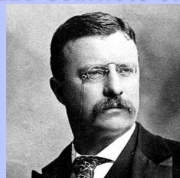
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### Ethics and Conflicts of Interest

The one thing that I want to leave my children is my good name.



Theodore Roosevelt  
Governor of the State of New York  
President of the United States

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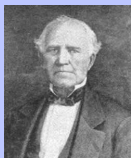
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### Ethics and Conflicts of Interest

I would give no thought of what the world might say of me, if I could only transmit to posterity the reputation of an honest man.



**Sam Houston**

(1793-1863)  
Governor of the State of Tennessee  
President of the Republic of Texas  
United States Senator  
Governor of the State of Texas

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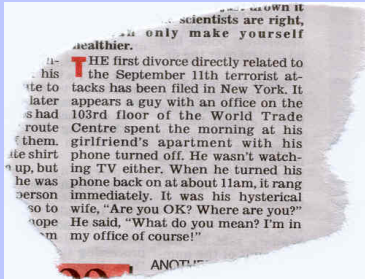
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### Ethics & Personal Integrity

You will get caught!




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**E-Mail ~ Texting  
FaceBook ~ Twitter ~ Blogs**



**Fun – Helpful – Efficient – Addicting  
But ..... Risky**

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### ELECTRONIC COMMUNICATIONS

What is a Public Record?

- If you have it, it is a public record, unless it falls under an exception.
- Agendas, Minutes, Resolutions, Ordinances, Contracts, Bid Documents, Reports, Correspondence, Electronic Records and E-mail messages are all included.

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**ELECTRONIC COMMUNICATIONS**

**Privacy Concerns**

**What about ....**

**Personal E-Mail**  
**E-Mail Address Lists**

**What is the reasonable expectation of privacy?**

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**ELECTRONIC COMMUNICATIONS**

**E-Mail Issues**

- E-Mail is a document
- E-Mail on public business is a public record
- Even on a personal computer
- E-Mail is really not private
- E-Mail is discoverable
- E-Mail can come back to haunt you
- E-Mail can be embarrassing

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**ELECTRONIC COMMUNICATIONS**

**More Than E-Mail Issues**

- E-Mail rules are being applied to public record requests for other means of electronic communications
- E-Mail attachments
- Facebook
- Twitter
- Text Messaging
- Blogs

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**PAY ATTENTION,  
THIS COULD HAPPEN TO YOU !!**



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## ELECTRONIC COMMUNICATIONS

### E-Mail Issues

The President of the University of Tennessee at Knoxville resigned after intimate e-mail messages between the President and an Administrator were published in the local newspaper.

June, 2001

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## ELECTRONIC COMMUNICATIONS

### E-Mail Issues

**“But it is on my personal computer.”**

Government Records Council Case 2005-127, decided December 8, 2005 - held that e-mail on the Mayor’s personal computer was a public record and must be produced in response to an OPRA request. The Custodian was directed to produce the e-mail messages.

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## ELECTRONIC COMMUNICATIONS

### Good for a laugh – and not much more

John Jones would like to recall the previous e-mail message entitled "This guy is a real jerk"

Please delete the e-mail and destroy any printed copies.

If it was forwarded, please recall the forwarded messages.

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## ELECTRONIC COMMUNICATIONS

### Good for a laugh – and not much more

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## ELECTRONIC COMMUNICATIONS

### What are employees doing?

- 61% of employees access personal e-mail at work.
- 41% use instant messaging.
- Danger Points
  - Indiscrete use of internet and e-mail
  - Inappropriate and illegal activities conducted online (pornography, gambling, etc.)
  - Hostile workplace issues, harassment, discrimination
  - Disclosure of municipal information
  - Abuse of municipal resources

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## ELECTRONIC COMMUNICATIONS

### Internet & E-mail Access

- allows employees to hopefully to be more productive.
- facilitates public communication.
- allows the public, professionals, contractors, to communicate with the municipal staff.
- absolutely essential now and in the future.

**BUT** .....

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## ELECTRONIC COMMUNICATIONS

### Internet & E-mail Access

- Recent findings of a Vault.com survey:
  - 37.1% said they surf the Web "constantly" at work.
  - 31.9% said they surf a few times a day at work.
  - 21.3% said they surf a few times a week at work.
  - 9.7% said they never surf at work (what's the internet?)

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## ELECTRONIC COMMUNICATIONS

### Internet & E-mail Access



- 70% of adult websites are hit between the hours of 9am and 5pm.
- What is on your computer screen can create a "Hostile Work Environment"

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## ELECTRONIC COMMUNICATIONS



- An April 2010 report found that SEC employees, during the height of the financial crisis spent hours surfing porn sites
- Senior officials spent as much as 8 hours a day surfing and downloading images.

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## Hostile Work Environment

- Sending or Receipt of pornographic e-mail may subject the employer to liability for harassment.

“the workplace is permeated with discriminatory intimidation, ridicule, and insult ... that is sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive work environment ....”

Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993)

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## Hostile Work Environment

- **Personnel Policies prohibit inappropriate use of electronic media (e-mail, Facebook, Twitter)**
- **Potential disciplinary action**
- **Exposure to lawsuits and judgments, including personal liability for punitive damages**

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### ELECTRONIC COMMUNICATIONS

It will be good to get together. Hope your flight from Dubai will be smooth. We should visit Great Adventure where they have a great coaster that is real terror for everyone. It is not far from Fort Dix, just a short ride. Went to New York last weekend to see the Awesome Bandit Band. Waste of time, they really bombed. Remember that August 15<sup>th</sup> is the target date to move in on campus. Call me on my cell when you get home and we can plot out what to do.

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### ELECTRONIC COMMUNICATIONS

#### Tip #1

Do not compose – and especially **DO NOT SEND** an e-mail when you are angry.

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### ELECTRONIC COMMUNICATIONS

#### Tip #2

Check and then check again the name and address of your intended recipient.

And then check it again before you SEND.

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### ELECTRONIC COMMUNICATIONS

#### Tip #3

Verify the attachment to make sure that it is the appropriate and correct item before you attach it.

To avoid errors, never attach something named "Document.pdf" or "Document.doc" or "Scan478897656879" – make sure your documents are named so that you can easily identify the attachment.

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### ELECTRONIC COMMUNICATIONS

#### Tip #4

Do not eMail inside jokes or use derogatory nicknames to reference others, whether officials, co-employees, citizens, consultants.

Assume that your eMail will be read by the very person that you are referencing or about whom you are making the joke.

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## ELECTRONIC COMMUNICATIONS

### Tip #5

#### Avoid DANGER phrases

- I really shouldn't put this in writing.
- Delete this e-mail as soon as you have read it.
- Don't tell anyone else, but .....
- Don't ask. You don't want to know.
- I'm not sure this is really legal, ethical, proper.
- The attachment is for your eyes only.

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## ELECTRONIC COMMUNICATIONS

### Tip #6

After composing your e-mail, save it as a draft and go back and re-read it a half-hour later. Then remember all of the other rules as you edit it and before you send it.

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## ELECTRONIC COMMUNICATIONS

### twitter

- Twitter is a way to send short messages – not more than 140 characters – on the author's Twitter page that can be read by any of the author's followers. Those followers can post responses.
- Once sent, the messages can be re-sent and distributed to an ever-increasing number of people.
- Messages cannot be recalled.
- The Library of Congress has and is archiving ALL Twitter messages ever sent.

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**ELECTRONIC COMMUNICATIONS**

**twitter**

Some statistics as of March 12, 2011

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**ELECTRONIC COMMUNICATIONS**

**twitter**

Some statistics as of March 12, 2011

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**ELECTRONIC COMMUNICATIONS**

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- 4% are age 3 to 12
- 14% are over age 50

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### ELECTRONIC COMMUNICATIONS

#### Tweet, tweet = no more job

An applicant for a job with Cisco, posted a tweet that said  
Cisco just offered me a job! Now I have to weigh the utility  
of a fatty paycheck against the daily commute to San Jose  
and hating the work.

An employee at Cisco saw the Tweet, and tweeted back:  
Who is the hiring manager. I'm sure they would love  
to know that you will hate the work. We here at Cisco  
are versed in the web.

The job applicant later posted an apology to Cisco.

Chicago Tribune – March 26, 2009

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### ELECTRONIC COMMUNICATIONS

#### Twitter Mistakes Come back to haunt people

Current example:

Congressman Weiner (New York) sent “inappropriate” twitter  
messages with photo attachments to a number of women.

The twitter messages were posted and then forwarded by others.

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### ELECTRONIC COMMUNICATIONS

#### Tweet, tweet = crunch

Public employee operating a municipal vehicle on municipal  
business is distracted by exchanging “tweets” with spouse,  
significant other, another employee, anyone ..... while driving, and  
is involved in a motor vehicle accident

- Employee injured
- Worker’s Compensation claim
- Overtime to cover for the employee
- Vehicle damaged
- Other driver injured
- Other vehicle damaged

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**ELECTRONIC COMMUNICATIONS**

Be careful what you Tweet



Don't think your tweets are private. Assume that they will be seen by the person that you LEAST want to see them.

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**ELECTRONIC COMMUNICATIONS**

**facebook**

Facebook helps you connect and share with the people in your life.



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**ELECTRONIC COMMUNICATIONS**

**facebook**

- Available to anyone over 13 with an e-mail address
- Profiles of the user
- Text messages
- Photographs
- Available to almost anyone
- Shows up in GOOGLE searches

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**ELECTRONIC COMMUNICATIONS**

**facebook**

- **Founded in February 2004**

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- **Half of active users log on every day**
- **Average user has 130 "friends"**
- **Users spend over 500 BILLION minutes per month on Facebook**

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## ELECTRONIC COMMUNICATIONS

### E-mail and Internet Monitoring

- Federal Rule: Electronic Communications Privacy Act ("ECPA") allows Internet and e-mail monitoring including real-time "interception" under following exceptions:
  - Consent; "ordinary course of business"; "service provider"
  - Fraser v. Nationwide Mutual Insurance Co., 352 F.3d 107 (3rd Cir. 2003) confirmed that employers can access employee's "stored" electronic communications under ECPA.
- General State Rule: No reasonable expectation of privacy in employer supplied e-mail or workplace Internet use. (Smyth v. Pillsbury Co.)

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## ELECTRONIC COMMUNICATIONS

In this day of wide dissemination of thoughts and messages through transmissions which are vulnerable to interception and readable by unintended parties, armed with software, spyware, viruses and cookies spreading capacity; **the concept of internet privacy is a fallacy upon which no one should rely.**

*New York v. Klapper, (N.Y. City Crim. Ct. Apr. 28, 2010)*

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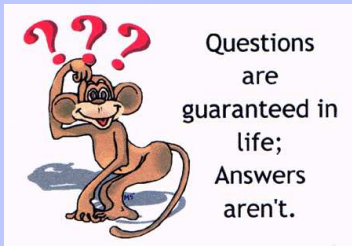
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??? Questions ???




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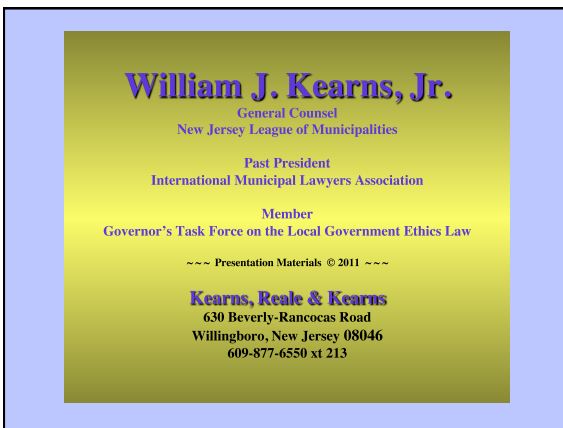
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