

New Jersey. County and Municipal Law Revision
Commission.

Title 40A, Municipalities and Counties;
Chapter 5 Local Fiscal Affairs Law.

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TITLE 40A, MUNICIPALITIES AND COUNTIES;

CHAPTER 5 LOCAL FISCAL AFFAIRS LAW.

40A:5-1. Short title.

This chapter shall be known and may be cited as the "Local Fiscal Affairs Law".

40A:5-2. Definitions.

As used in this chapter and any act amendatory to and supplementary thereto unless the context indicates otherwise:

"local government board" means the Local Government Board of the Division of Local Government in the Department of the Treasury;

"director" means the Director of the Division of Local Government in the Department of the Treasury;

"governing body" means the Board of Chosen Freeholders of a county or the commission, council, board or body having control of the finances of a municipality;

"local unit" means a county or municipality;

"chief financial officer" means the director of revenue and finance, comptroller, treasurer, collector or other financial officer of a municipality or the treasurer of a county;

"chief executive officer" means the mayor, commissioner or director of a local unit;

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"clerk" means the clerk of the municipality or clerk of the Board of Chosen Freeholders;

"warrant" means the draft or check of any local unit used in warranting disbursement of moneys, and shall in every instance be evidenced by the issuance of a check of the local unit. In no instance shall it be necessary for the local unit to refer to, or issue, a check separate and distinct from the warrant.

"check" means the instrument by which moneys of any local unit are disbursed.

Source. New.

40A:5-3. Fiscal year.

The fiscal year of every local unit shall begin on January first of each year and shall terminate on December thirty-first of the same year.

Source. R.S. 40:5-16.

40A:5-4. Annual audit required.

Every local unit shall cause an annual audit of its accounts and financial transactions to be made and completed within 5 months after the close of its fiscal year and for that purpose shall employ a registered municipal accountant of New Jersey. Nothing in this chapter shall prohibit the making of such audit by the director upon the request of the governing body.

Source. R.S. 40:4-1, 40:4-13, 40:4-14.

40A:5-5. Scope of audit.

Each audit shall embrace the accounts and transactions of the local unit and every board, body, officer or commission supported and maintained wholly or in part by funds appropriated by the local unit, unless otherwise provided by statute or regulations of the board. Each audit shall cover a complete fiscal year and, in addition, shall include a verification of all cash and bank balances as of the date of the audit thereof and an audit of the accounts to such date.

Source. R.S. 40:4-1.

40A:5-6. Report of audit.

Every such registered municipal accountant shall file the original report of his audit and recommendations with the clerk of the local unit and shall within 5 days thereafter file a certified duplicate copy thereof, over his signature, in the office of the director.

Source. R.S. 40:4-3.

40A:5-7. Publication of report and recommendations.

A synopsis of all audits, together with the recommendations made by the registered municipal accountant, shall be prepared and published by the clerk of the local unit at least once in the official newspaper of the local unit, if there be one, or if there be none, in a newspaper published in the local unit. If there is no newspaper published within the local unit, it shall be published

in a newspaper having a general circulation in the local unit.

If the clerk fails to have such publication made within 30 days after receipt of the report of audit and recommendations, he shall be subject to a fine of \$10.00 payable to the local unit for each day after the expiration of the 30 days that such publication fails to appear.

Source. R.S. 40:4-2; 40:4-3.

40A:5-8. Preparation of audit by director.

If any local unit does not carry out the provisions of this chapter by reason of the failure of the governing body thereof to institute and complete such audit within the time provided herein, the director may, by his employees and agents or by auditors employed for that purpose, conduct an audit of the books of such local unit and such audit shall be taken to be the statutory audit of the local unit and shall be paid for by the local unit on bill rendered therefor.

For the services of the said director, or his employees or agents, or the pay of the auditors employed by him, whether permanent employees of the division or not, there shall be paid to him by the local unit for deposit in the State treasury, a per diem allowance not to exceed \$50.00 for each person for work done in connection with the audit or examination of the accounts. Said amount, if not paid when billed shall be recoverable in an action at law in any court of competent jurisdiction.

Source R.S. 40:4-4.

40A:5-9. Audit by registered municipal accountant.

Every audit required under this chapter shall be completed by an accountant or auditor who holds an uncanceled license as a registered municipal accountant of New Jersey. Such license shall be issued annually by the New Jersey State Board of Public Accountants, shall be dated September 1 and run until August 31 of the following year, unless sooner cancelled or revoked by the said State Board of Public Accountants.

Every report of audit shall be signed by the registered municipal accountant making the audit, or in charge thereof, who shall be the person authorized by the local unit to make the audit. In case any license shall be revoked, such revocation shall not be construed to affect any agreement which may be made by any local unit with any other registered municipal accountant, even though such accountant shall have been associated with the person whose license has been revoked.

Source. R.S. 40:4-5.

40A:5-10. Revocation or cancellation of license.

Upon proof that any registered municipal accountant shall have knowingly omitted to report any error, omission, irregularity, violation of law or discrepancy found in the books or accounts, or shall have issued false reports of the audit of any local unit, or of such a nature as not to comply with the requirements of the director, or if such registered municipal accountant shall fail to file such report and recommendations as herein directed, or neglect or refuse to carry

out any agreement for audit, his registration license may be cancelled by the State Board of Public Accountants. It shall be the duty of the director to notify the State Board of Public Accountants of any matters coming to his attention relative to any of the foregoing. Upon cancellation or refusal of a license, a person aggrieved thereby shall have the right to a review by the Superior Court in a proceeding in lieu of prerogative writ.

Source. R.S. 40:4-9.

40A:5-11. Advertising for bids unnecessary.

No local unit shall be required to advertise for bids for any of the work performed pursuant to 40A:5-4.

Source. R.S. 40:4-16.

40A:5-12. Annual financial statement of local unit.

The financial officer of each local unit shall file annually with the director a verified statement of the financial condition of the local unit as of the close of the fiscal year. Such statement shall be filed, upon forms furnished and prescribed by the director, within 2 months after the close of the fiscal year of the local unit.

Source. R.S. 40:5-13 as am. L. 1944, c. 56; L. 1947, c. 117, s. 17.

40A:5-13. Annual financial statements by boards, committees and commissions of a local unit.

Every board, committee or commission of a local unit which by law is vested with power to expend public moneys, other than by warrant upon its financial officer, shall, within 10 days after the beginning of the fiscal year of the local unit, file with the said financial officer a statement showing in detail the items of moneys received and disbursed by it during the preceding fiscal year, and also the balance of unexpended funds at the end of the fiscal year.

If the official charged with the responsibility of filing shall fail to file such statement within 5 days after the time fixed for filing the same, he shall be subject to a penalty of \$5.00 for each day of neglect to file the same to be recovered by the State Treasurer in a summary proceeding against such official instituted and prosecuted under the Penalty Enforcement Law.

Source. R.S. 40:5-14; 40:5-15.

40A:5-14. Legal depositories for public moneys.

The governing body shall, by resolution passed by a majority vote of all the members thereof, designate as a depository for its moneys a bank or trust company having its place of business in this State and organized under the laws of the United States or of this State, as the case may be.

The official charged with the custody of such moneys shall deposit them in the depository or depositories designated by the

governing body and shall thereafter be relieved of any liability or loss of such moneys due to the insolvency or closing of the depository or depositories.

Source. R.S. 40:5-3, 40:5-4, 40:5-5.

40A:5-15. Deposit of funds paid to the local unit.

All money received from any source by or on behalf of any local unit or any board or department thereof shall be paid to the officer charged with the custody of the general funds of the local unit, who shall deposit all such receipts within 48 hours after the receipt thereof to the credit of the local unit in its designated legal depository.

Every collector of taxes, or other officer charged with the duty of collecting taxes, shall deposit all moneys received by virtue of such office within the time limits and in the places hereinabove mentioned.

Source. R.S. 40:48-10, 40:125-13

40A:5-16. Payment of moneys of local unit.

The governing body of any local unit shall not pay out any of its moneys

a. unless the person claiming or receiving the same shall first present a detailed bill of items or demand, specifying particularly how the bill or demand is made up, with the certification of the party claiming payment that it is correct. The governing body may, by resolution, require an affidavit in lieu of the said

certification, and any disbursing officer may take such affidavit without cost, and

b. unless it carries a certification of some officer or duly designated employee of the local unit having knowledge of the facts that the goods have been received by, or the services rendered to, the local unit.

Source. R.S. 40:5-1 as am. P. L. 1954, c. 36, s. 1.

40A:5-17. Approval of claims.

a. All claims shall be presented to the chief executive officer of the local unit for approval or disapproval, and no claims shall be paid unless so approved.

b. The chief executive officer shall within 10 days after the receipt of any claim approve the same and return it to the officer entitled thereto. If any claim is disapproved, he shall deliver the same to the proper official with his reasons for his disapproval.

c. The governing body may by a majority vote of its full membership order the payment of any claim disapproved by the chief executive officer. In such case, the claim shall be paid in the same manner as other claims are paid.

The governing body may by ordinance prescribe the manner in which claims shall be approved for payment and, unless such ordinance provides otherwise, approval or disapproval shall follow the procedures set forth in a, b, or c above.

Source. R.S. 40:48-13, 40:48-14, 40:48-15, 40:48-16, 40:48-17.

40A:5-18. Withdrawal of funds.

In all cases where the local unit has not by ordinance directed otherwise the method of disbursing moneys for the payment of claims shall be as follows:

In the case of a county, by check issued on the order of the clerk to the board, signed by the county treasurer and countersigned by such other officers as may be designated.

In the case of a municipality, by check drawn on the treasurer or other custodian of funds of the municipality, and after being signed as hereinafter provided, shall be countersigned by the treasurer or other custodian of funds. All such checks shall be signed by the mayor or other chief executive officer and the clerk, comptroller or auditor, as the case may be.

Every local unit shall maintain general books of account subject to such direction of detail as the director shall prescribe. The local unit shall provide the means, financial and otherwise, to carry out this purpose.

Source. R.S. 40:23-10, 40:48-12.

40A:5-19. Payment of salaries and wages.

The governing body of any local unit may provide by ordinance for the manner in which and the time at which salaries, wages or other compensation for services shall be paid, and prescribe the form and manner in which checks upon the treasury shall be drawn and signed for that purpose.

The local unit may, by resolution, provide for the bi-weekly payment of the salaries, wages and compensation of officers and employees, both elective and appointive.

Source. R.S. 40:21-14, 40:21-14.1.

40A:5-20. Officers to deliver funds and records when term expires.

Whenever any official ceases to hold office in any local unit, on the day of the expiration of his term of office, he shall forthwith deliver to the municipal clerk, or other person who may be designated by the governing body of the local unit to receive the same, all moneys, papers, books, memoranda, accounts and any data of any nature whatever pertaining to his office.

On failure or refusal to carry out the provisions of this section within 5 days after the expiration of his term, he shall, on notice in writing of such delinquency from the chief executive officer of the local unit, be subject to a penalty of \$50.00 for each day of refusal or neglect to comply therewith. The penalty shall be collected by the local unit in an action at law.

Source. R.S. 40:46-2.

40A:5-21. Power to appropriate money for special purposes.

Every local unit may provide for the following and may make provision therefor in the annual budget:

- a. Establish and maintain a mental health program for the operation or the support of centers for the diagnosis and treatment of mental disorders in persons, such as mental hygiene clinics, child guidance centers and agencies, whether public or private,

approved by the Department of Institutions and Agencies, which provide family counseling service. Such program may be carried on by the establishment and operation of separate facilities or by conducting the same in connection with an existing institution or by contract with a licensed hospital or approved child care center or the board of chosen freeholders of another county or the governing body of another municipality. The local unit may appropriate sufficient funds to carry out said program when established and maintained pursuant to this act.

b. Appropriate money to a post of the Grand Army of the Republic, and if there be no such post in the county it may make appropriations to any camp of Sons of Veterans of the Civil War, for the proper observance of memorial and other patriotic holidays.

c. Make a voluntary contribution of not more than \$3,000 annually to any duly incorporated first-aid and emergency or volunteer ambulance or rescue squad association of the county, or of any municipality therein, rendering service generally throughout the county, or any of the municipalities thereof.

d. May by ordinance appropriate and dedicate all or any portion of the revenues which it derives from parking meters in excess of the cost of purchase, installation, maintenance and operation of said parking meters, to the purposes of creation, purchase, construction and maintenance of off-street parking facilities.

e. Where the employees of any local unit have or shall have formed themselves into groups for the purpose of obtaining the advantages of a group plan of life insurance, a group plan of health

and accident insurance, a group plan for any hospital service or a group plan for medical and surgical insurance or one or more of them, the governing body, when written petitions and authorizations signed by the employees as individuals are filed with the receiving and disbursing officer of the local unit, may authorize, by resolution, the deductions specified in the written petitions and authorizations, and the payment of them to the designated fiscal agent of the group,

(1) whenever a group has or shall have been established in accordance with the provisions of subsection e, the governing body of the local unit in which the group or groups are formed may pay as additional compensation to the individual members of the group or groups a part or all of the premium on the group policy or policies;

(2) nothing herein contained shall be construed as compelling the governing body to pay any portion of the premium on such group or groups.

Source. R.S. 40:23-8, 40:48-9, 40:5-2, 40:5-2.11, 40:11-15, 40:11-16, 40:5-2.9, 40:5-2.10.

40A:5-22. Special county purposes.

Every county may provide for the following and may make provision therefor in its annual budget:

a. Advertising the advantages and attractions of the county for residential and business purposes in newspapers, magazines or otherwise, either within or without the State.

b. Appropriate a sum not in excess of \$2,500 in any 1 year for membership in any association composed exclusively of boards of chosen freeholders.

c. For aid to volunteer fire companies located in any municipality or fire district in such county to keep abreast of the latest methods, procedures and techniques of fire fighting by enabling members of said companies to attend courses of instruction or otherwise acquire familiarity with said methods, procedures and techniques, said appropriation not to exceed \$2,000 in any year. Source. R.S. 40:23-5, 40:23-6, 40:23-8.9.

40A:5-23. Special municipal appropriations.

Every municipality may provide for the following and make provision therefor in its annual budget:

a. By resolution of its governing body, join with any other municipality or municipalities in the formation of an organization of municipalities for the purpose of securing concerted action in behalf of such measures as the organization shall determine to be in the common interest of the municipalities. The organization may meet at such times and places as it may determine for the discussion of measures deemed to affect the welfare of the several member municipalities thereof; maintain an office in charge of a secretary or other officer or agent appointed by the organization; circulate literature and information among the municipal officers of this State and may generally take such action as the organization in meeting shall determine to be wise in support of such

measures as it deems to be in the interest of the several members thereof.

Any municipality which shall join such an organization may, by action of its governing body, designate the chief executive officer of the municipality, or any member of the governing body thereof, to represent it in the organization, and may contribute and contract to contribute such portion of the expenses of the organization and such expenses of attendance upon any meeting as the governing body of the municipality may determine. The governing body may appropriate money and approve the attendance of such officers and employees as may be deemed appropriate to any conferences or meetings whether held within or outside the State.

b. Appropriate money and, by ordinance, provide for the construction and erection of a monument or memorial of a permanent character commemorative of the services of soldiers and sailors of the United States in World War II, or to provide for a contribution to part of the cost of any similar monument or memorial; provided, that any such ordinance shall set forth the price in respect to the monument or memorial, including the type of the monument or memorial and the amount of money proposed to be expended or contributed.

In the event that any such ordinance provides for a contribution in accordance with the provisions of this act, no money shall be expended by the municipality except upon the presentation of a duly sworn claim approved by resolution of the governing body of the municipality.

c. Prepare, maintain and display any exhibition of the products or industries of the municipality, and may contribute funds toward the maintenance or conduct thereof.

d. Provide for the celebration, at public expense, of any public event, anniversary or holiday.

e. Whenever any group of persons employed by a municipality shall be acceptable for participation in any hospital service plan and shall indicate in writing their desire to participate in any hospital service plan, and the governing body thereof by majority vote approves such participation, then, and thereupon, the proper disbursing officers of such municipality, under such rules and regulations as may be established by such governing body, are hereby empowered and directed to deduct specified fees or premiums from the payments of the salaries made to such officers and employees as shall participate in such plan, and said disbursing officer shall, thereupon, pay over to the corporation by warrant drawn in the manner provided by law for the payment of bills the sum total of said deductions from the salaries of such officers and employees. Sanction by the governing body to participate in such hospital service plan shall in no wise impose any liability or responsibility whatever on any such municipality. The making of the above deductions shall be construed as equivalent to voluntary payments by an officer or employee and any and all rights of any officer or employee now existing under the laws of this State shall be and remain the same as if the foregoing deductions were not made.

Source. R.S. 40:48-2.16, 40:48-2.17, 40:48-5.3, 40:48-5.4, 40:46-37, 40:48-22, 40:48-23.

40A:5-24. Petty cash fund of local unit.

A local unit may establish a petty cash fund upon written application to and after approval by the director. All matters relating to the establishment, accounting, repayment and discontinuance of such fund shall be in the discretion of the director, who shall promulgate reasonable rules and regulations in respect thereto.

Source. R.S. 40:5-7, 40:5-8, 40:5-9, 40:5-10 and 40:5-11.

40A:5-25. Investigation of expenditures of local unit.

A judge of the Superior Court may, in his discretion, make a summary investigation into the affairs of any local unit and appoint an expert or experts to prosecute such investigation whenever:

a. a petition for such investigation shall be presented to him, signed by 25 freeholders, who have paid taxes on real estate located within the local unit within 1 year, and such petition sworn to and subscribed by them sets forth that they have cause to believe that the moneys of such local unit are being, or have been, unlawfully or corruptly expended, in which case, at least 10 days' notice of the hearing thereon shall be given to the disbursing officer and the governing body of the local unit; or

b. upon resolution of the governing body requesting such investigation.

Source. R.S. 40:6-1, as am. L. 1953, c. 37; 40:6-2.

40A:5-26. Costs, taxation and payment, bond.

The judge, if he deems it advisable, may require the applicants to furnish a bond to be filed with the county clerk for the payment of the costs and expenditures of the investigation.

The costs, including witness fees and mileage, shall, by his order, be taxed to and paid by the local unit whose expenditures have been investigated.

Source. R.S. 40:6-2, as am. L. 1953, c. 37, s. 3, 40:6-1.

40A:5-27. Filing and publication of report of investigation.

The results or report of the investigation shall be filed in the office of the Clerk of the Superior Court within 10 days after the completion thereof. The judge may, in his discretion, cause the results of the investigation to be published thereafter in such manner as he may deem proper.

Source. R.S. 40:6-6, as am. L. 1953, c. 37, s. 6; 40:6-1 and 40:6-2, as am. L. 1953, c. 37, s.4.

40A:5-28. Attorney of local unit may appear on its behalf.

Whenever an investigation shall have been ordered to be made pursuant to this chapter, and the governing body of the local unit shall pass a resolution directing its attorney, counsel or other legal representative, as it may choose, to appear and act on its behalf or on the behalf of any of its officials, such attorney may appear at the investigation and on behalf of the local unit or any of its officials, present evidence, examine witnesses and take part in the investigation.

Source. R.S. 40:6-5.

40A:5-29. Subpoenas and testimony of witnesses.

A judge of the Superior Court during the conduct of an investigation pursuant to this chapter may:

a. upon his own motion or upon application of the expert designated to conduct such investigation, exercise the subpoena powers of the Superior Court and enforce such subpoenas in similar manner as in civil actions in the Superior Court;

b. take or order the obtaining of evidence and the taking of testimony, by deposition or otherwise, in similar manner as in civil actions in the Superior Court.

Any person who shall willfully and corruptly testify falsely to any material matter upon oath administered by the judge or the expert designated to conduct the investigation shall be guilty of perjury.

Source. R.S. 40:6-3, as am. L. 1953, c. 37, s. 5.

40A:5-30. Witness fees and mileage taxed as costs.

Witnesses subpoenaed by virtue of this chapter shall be entitled to receive the same fees and mileage as witnesses in civil actions.

Source. R.S. 40:6-4.

40A:5-31. Duty of officers and employees of local unit.

Every officer and employee of a local unit, which is the subject of a summary investigation as provided in this chapter, shall obey all orders of the judge and shall facilitate the conduct of the said investigation. A refusal or failure to obey such orders or an intentional failure to facilitate the conduct of the investigation may be punished by the judge as for contempt.

Source. R.S. 40:6-2 as am. L. 1953, c. 37, s. 6.