

CHAPTER 35

LOCAL GOVERNMENT ETHICS LAW

Authority

N.J.S.A. 40A:9-22.7(g).

Source and Effective Date

R.2006 d.371, effective September 19, 2006.
See: 38 N.J.R. 2554(a), 38 N.J.R. 4411(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 35, Local Government Ethics Law, expires on March 18, 2014. See: 45 N.J.R. 2295(a).

Chapter Historical Note

Chapter 35, State Aid for Planning Local Effectiveness Program, was adopted as R.1973 d.331, effective November 29, 1973. See: 5 N.J.R. 366(a), 6 N.J.R. 4(a).

Chapter 35, State Aid for Planning Local Effectiveness Program, was repealed by R.1990 d.16, effective January 2, 1990. See: 21 N.J.R. 3046(b), 22 N.J.R. 26(b).

Chapter 35, Local Government Ethics Law, was adopted as R.1996 d.276, effective June 17, 1996. See: 27 N.J.R. 3151(a), 28 N.J.R. 3122(a).

Chapter 35, Local Government Ethics Law, was readopted as R.2001 d.229, effective June 14, 2001. See: 33 N.J.R. 1159(a), 33 N.J.R. 2475(a).

Chapter 35, Local Government Ethics Law, was readopted as R.2006 d.371, effective September 19, 2006. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 35, Local Government Ethics Law, was scheduled to expire on September 19, 2013. See: 43 N.J.R. 1203(a).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. PROCEEDINGS

- 5:35-1.1 Complaints; procedure
- 5:35-1.2 Confidentiality
- 5:35-1.3 Local ethics boards; complaint conflicts
- 5:35-1.4 Local ethics boards; appeals of complaints
- 5:35-1.5 Advisory opinions
- 5:35-1.6 Local ethics boards; advisory opinion conflicts

SUBCHAPTER 1. PROCEEDINGS

5:35-1.1 Complaints; procedure

(a) Every complaint alleging that a local government officer or employee, who is not regulated by a county or municipal code of ethics, has violated the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq., shall be in writing and signed by the complainant. However, the Local Finance Board may upon its own initiative initiate a complaint against a local government employee or officer, in which case the summary of the complaint shall be contained in the Board's minutes and the complaint shall proceed, where applicable, in

accordance with this subchapter or be transmitted to the appropriate county or municipal ethics board.

(b) Complaints shall:

1. State the point of the Local Government Ethics Law alleged to be violated;
2. State the name(s) and title(s) of the parties involved in the action and against whom the complaint is filed;
3. Set forth in detail the pertinent facts surrounding the alleged violative action;
4. Indicate whether the complaint concerns the complainant in any way and what, if any, relationship the complainant has to the subject of the complaint; and
5. Indicate any other action previously taken in an attempt to resolve the issue and indicate whether the issue is the subject of pending litigation elsewhere.

(c) The Board shall not process a complaint on a matter which is pending in a court of law or administrative agency of the State.

(d) The Board's staff shall acknowledge receipt of the complaint within 30 days of receipt of the complaint and commence a preliminary investigation as to whether the complaint is within the Board's jurisdiction or frivolous or without any reasonable factual basis.

(e) Upon completion of the preliminary investigation, the Board shall make a determination as to whether the complaint is outside its jurisdiction or frivolous or without any reasonable factual basis.

1. If the Board concludes that the complaint is outside its jurisdiction, frivolous or without any reasonable factual basis, the Board's staff shall advise the complainant and the local government employee or official, who is the subject of the complaint, in writing of the Board's conclusion.

2. If the Board concludes that the complaint is within its jurisdiction, not frivolous, and having a reasonable factual basis, the Board shall direct a further investigation to be conducted by the Board's staff.

(f) The Board's staff in conducting the investigation shall notify the local government employee or officer, who is the subject of the complaint, of the nature of the complaint and the facts and circumstances surrounding the complaint.

1. The local government employee or officer shall have the opportunity to present to the Board's staff any statements or other information concerning the complaint he or she wishes. Such statements or information shall be presented to the Board within 30 days of receipt of notification. Upon written application, the Board or its staff may extend the time for filing such statement.

2. The Board's staff shall obtain any further information or statements from any person with relevant information or from any other source, necessary to conduct the investigation.

(g) At the conclusion of the investigation, the Board's staff shall present to the Board the results of its investigation, which shall include any statements or information received from the local government employee or officer, who is the subject of the complaint, and from any person or source with relevant information. The Board shall consider the matter based on the documents submitted to the Board's staff or obtained by the Board's staff. However, the Board in its discretion may direct the complainant, the local government employee or officer, who is the subject of the complaint, or any other person with relevant information to appear before the Board or to provide to the Board any additional information. The local government employee or officer who is the subject of the complaint may request to appear before the Board. However, such appearance is not required, unless directed by the Board.

(h) If the Board determines, based upon the results of the investigation, that no violation of the Local Government Ethics Law has been committed by the local government employee or officer, the Board shall issue a Notice of Dismissal to the individual and provide a copy to the complainant.

(i) If the Board determines, based upon the results of the investigation, by a two-thirds vote that a violation of the Local Government Ethics Law has been committed by the local government employee or officer, the Board shall issue a Notice of Violation to the individual containing the nature of the violation, assessing a penalty, and advising the individual of his or her opportunity to request an administrative hearing.

1. The Notice of Violation shall be transmitted to the local government employee or officer by regular and certified mail or by personal service.

2. The local government employee or officer, within 30 days of receipt of the letter, may request an administrative hearing to contest the Notice of Violation. Any request for an administrative hearing must be filed in the Board's office within 30 days of the receipt of the Notice of Violation by the local government employee or officer. The Board in its sole discretion may extend the time for requesting an administrative hearing for any reason it deems appropriate.

3. If an administrative hearing is not requested or if not timely filed by the local government employee or officer, the Order shall be deemed the Final Decision of the Board.

(j) Any administrative hearing shall be conducted in conformity with the rules and procedure, insofar as they may be applicable, of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

1. The Board shall determine whether it will conduct the administrative hearing or whether to transmit the matter

to the Office of Administrative Law as a "contested case" for the rendering of an initial decision.

2. If the Board transmits the matter to the Office of Administrative Law as a "contested case," the Board shall review the initial decision and render a final decision. However, any finding that a violation of the Local Government Ethics Law has been committed by the local government employee or officer, requires a two-thirds vote of the Board.

Case Notes

Adjustment board member's financial involvement constitutes potential conflict of interest. *Tighe v. Local Finance Board*, 97 N.J.A.R.2d (CAF) 76.

Lack of conflict voting or influence overcomes ethics charge against town planning board members. *Local Finance Board v. Zaretsky and DeLuca*, 97 N.J.A.R.2d (CAF) 71.

Former mayor sanctioned for using official position to secure unwarranted advantages for himself. *DiLauro v. Local Finance Board*, 97 N.J.A.R.2d (CAF) 69.

5:35-1.2 Confidentiality

(a) Any complaints, statements, information, or documents obtained or prepared by the Board staff or the Board are deemed confidential and not subject to public disclosure during the course of the preliminary investigation or investigation to determine whether a violation of the Local Government Ethics Law has occurred, except as necessary for the Board's staff or the Board to conduct the preliminary investigation or investigation.

(b) The Board's discussion regarding a preliminary investigation or investigation shall be in executive session. However, any vote by the Board regarding a preliminary investigation or investigation shall be in public session. In public session, the complaint shall only be identified by a docket number, determined by the Board's staff.

(c) The Notice, the complaint and allied statements or information obtained by the Board's staff during the course of the preliminary investigation or investigation are subject to public disclosure 30 days after mailing a Notice of Dismissal, pursuant to N.J.A.C. 5:35-1.1(h), or a Notice of Violation, pursuant to N.J.A.C. 5:35-1.1(i).

Amended by R.2006 d.371, effective October 16, 2006.
See: 38 N.J.R. 2554(a), 38 N.J.R. 4411(a).
Rewrote (c).

5:35-1.3 Local ethics boards; complaint conflicts

(a) A municipal or county ethics board, established pursuant to the Local Government Ethics Law, which has before it a complaint against a local government employee or officer regulated by its code of ethics and which is unable to act on the complaint because a majority of the board has a conflict of interest or is otherwise precluded by ethical consideration from rendering a decision in a matter, shall request the Local Finance Board to assume original jurisdiction.