

3. The county or municipal ethics board shall advise, in writing, the complainant and the local government employee or officer, who is the subject of the complaint, of the request. A copy of which shall be provided to the Local Finance Board.

(b) The Board shall review the request and determine whether the county or municipal ethics board is precluded from rendering a decision in the matter.

1. If the Board determines that the county or municipal ethics board is precluded from rendering a decision, the Board shall assume original jurisdiction over the matter and advise the county or municipal board of the determination. Thereafter, the complaint shall proceed in accordance with N.J.A.C. 5:35-1.1. However, the Board shall only consider whether a violation of the State's code of ethics has occurred.

2. If the Board determines that the county or municipal ethics board is not precluded from rendering a decision, the Board shall advise the county or municipal ethics board of the determination. Thereafter, the county or municipal ethics board shall render a final decision in the matter in accordance with the Local Government Ethics Law.

3. The county or municipal ethics board shall advise the complainant and the local government employee or officer, who is the subject of the complaint, of the Board's determination.

5:35-1.4 Local ethics boards; appeals of complaints

(a) A final decision of a county or municipal ethics board, established pursuant to the Local Government Ethics Law, on a complaint may be appealed by the complainant or the local government employee or officer, who is the subject of the complaint, to the Local Finance Board within 30 days of the decision.

(b) The appeal shall be in writing and include the grounds for appeal and attach the complaint and the decision of the county or municipal ethics boards. A copy of the appeal and allied papers shall be filed with the appropriate county or municipal ethics board.

(c) Upon receipt of the appeal, the county or municipal ethics board shall transmit to the Local Finance Board the board's complete file in the matter, which shall include any transcripts or tapes of the hearing, and a copy of the municipal or county code of ethics.

(d) The Board in its discretion may submit the appeal to the Office of Administrative Law as a "contested case" for the rendering of an initial decision in accordance with the Administrative Procedure Act and these rules. The Board shall review the initial decision and render a final decision.

(e) If the record below is deemed sufficiently complete by the Board or an Administrative Law Judge, the Board, or an

Administrative Law Judge, may consider the matter solely on the record below. If the record is not deemed sufficiently complete by the Board, or an Administrative Law Judge, the Board, or an Administrative Law Judge, in its discretion may direct the submission of additional evidence, testimony, or oral argument to complete the record.

(f) Any final decision of the Board finding that a local government employee or officer has violated the Local Government Ethics Law requires a two-thirds vote of the Board.

(g) The final decision of the Board shall be provided to the complainant, the local government employee or officer who is the subject of the complaint, and the appropriate county or municipal ethics board.

5:35-1.5 Advisory opinions

(a) A local government employee or officer not regulated by a county or municipal code of ethics may request from the Local Finance Board an advisory opinion as to whether any proposed activity or conduct constitutes a violation of the Local Government Ethics Law.

1. The request shall be in writing signed by the local government employee or officer who is the subject of the request or his or her attorney.

2. The request shall set out the factual situation in detail, the specific question(s) of the requester, and whether there is any pending litigation or action relevant to the facts of the inquiry. The Board will not process an advisory opinion request on a matter pending in a court of law or an administrative agency of the State.

3. The Board will not consider a request for an advisory opinion regarding activity or conduct that has already occurred, unless the requester certifies that the activity or conduct is likely to be of a continuing nature.

4. The Board will not consider a request for an advisory opinion from a local government officer or employee, or his or her attorney, who is not the subject of the proposed activity or conduct.

(b) The Board's staff shall acknowledge receipt of the request within 30 days of receipt of the request.

(c) The Board's staff shall review and present to the Board requests for advisory opinions that comply with N.J.A.C. 5:35-1.5(a).

(d) The Board shall determine whether in its opinion the proposed activity or conduct constitutes a violation of the Local Government Ethics Law. The Board's determination shall be reduced to writing and provided to the requester.

(e) Advisory opinions shall not be made public unless two-thirds of the Board directs that the opinion be made public. Public advisory opinions shall not disclose the requester's identity, unless the Board in making the advisory

opinion public also determines by a two-thirds vote to disclose the requester's identity. Discussions of advisory opinions by the Board shall be conducted in executive session, unless the requester requests that the Board's discussion be in the public session of the Board's meeting.

(f) Unless the Board determines that the advisory opinion be made public, the request for the advisory opinion and all allied documents or information obtained or prepared by the Board's staff shall remain confidential and not subject to public disclosure.

(g) If the request for the advisory opinion reports conduct or activity that has already occurred, the Board in its discretion may initiate a complaint against the requester if the Board believes that a violation of the Local Government Ethics Law may have occurred.

Case Notes

Housing authority members inadvertently violated ethics law by hiring former member as executive director within one year of termination and without holding open competitive examination. *Stango v. Local Finance Board*, 96 N.J.A.R.2d (CAF) 57.

5:35-1.6 Local ethics boards; advisory opinion conflicts

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

(b) The procedures, to the extent applicable, contained in N.J.A.C. 5:35-1.5 shall be followed for making the request and for determining whether the Board will assume jurisdiction or direct the county or municipal ethics board to consider the advisory opinion. If the Board assumes jurisdiction of the matter, the Board will only issue an advisory opinion as to whether the proposed conduct or action constitutes a violation of the State's code of ethics.