

CHAPTER 35

LOCAL GOVERNMENT ETHICS LAW

Authority

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

Source and Effective Date

R.1996 d.276, effective June 17, 1996.
See: 27 N.J.R. 3151(a), 28 N.J.R. 3122(a).

Executive Order No. 66(1978) Expiration Date

Chapter 35, Local Government Ethics Law, expires on June 17, 2001.

Chapter Historical Note

Chapter 35, State Aid for Planning Local Effectiveness Program, was filed as R.1973 d.331, effective November 29, 1973. See: 5 N.J.R. 366(a), 6 N.J.R. 4(a). Chapter 35 was repealed by R.1990 d.16, effective January 2, 1990.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: Source and Effective Date.

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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) Upon the issuance and receipt of, or 30 days after mailing, whichever is sooner, 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), 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.

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.

1. Such request shall be in writing signed by the chairperson of the county or municipal ethics board or its legal counsel and detail the exact nature of the complaint and the exact nature of the county or municipal board's inability to render a decision.

2. Attached to the request shall be the complaint, the county or municipal code of ethics, and all relevant documents and information obtained by the county or municipal ethics board during the course of the investigation.

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

Mayor's announcement of amnesty program for illegal multi-family units violated Local Government Ethics Law where mayor owned such units, even though program was not implemented. *Wargacki v. Local Finance Board*, 97 N.J.A.R.2d (CAF) 1.

Councilmember's employment with organization that had contract with borough created conflict of interest. *Martine v. Local Finance Board*, 96 N.J.A.R.2d (CAF) 111.

Bridge Commissioner violated Local Government Ethics Law by voting for substantial raise for himself when he assumed full-time administrative duties. *Catarcio/Cape May County Bridge Commission v. Local Finance Board*, 96 N.J.A.R.2d (CAF) 99.

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.

CHAPTER 39
(RESERVED)