



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

July 16, 2012

Edward J. Mahaney, Mayor
City of Cape May



Re: Local Government Ethics Law
Complaint #LFB-12-030
Notice of Determination

Dear Mayor Mahaney:

The purpose of this letter is to apprise you of the Local Finance Board's final disposition of the above-referenced complaint. As you are aware, the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq., (LGEL) provides the Local Finance Board (Board) with the power to initiate, receive, hear and review complaints, and hold hearings with regard to possible violations of the LGEL, where no local ethics board has been established, and determine if a complaint against a local government officer or employee is within its jurisdiction, frivolous, or without a reasonable factual basis, prior to conducting an investigation. You are hereby notified that a complaint was filed against you and it was dismissed.

Complaint #LFB-11-026, as summarized, alleged that you violated the Local Government Ethics Law when you participated in your official capacity as Mayor in matters related to an agreement between the City of Cape May and the Temple University School of Tourism and Hospitality Management to provide consulting services to the City of Cape May because (i) you have received three (3) degrees from Temple University, (ii) you are a "devoted alumnus" of Temple University, and (iii) the University solicited a contribution from you in exchange for the right to name University facilities.

The complaint specifically cited the following provisions of the LGEL as having been violated:

N.J.S.A. 40A:9-22.5(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;



N.J.S.A. 40A:9-22.5(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;

N.J.S.A. 40A:9-22.5(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;

N.J.S.A. 40A:9-22.5(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;

N.J.S.A. 40A:9-22.5(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;

N.J.S.A. 40A:9-22.5(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 in which he is associated; and,

N.J.S.A. 40A:9-22.5(i) No local government officer or employee 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;

Please note, **N.J.S.A. 40A:9-22.3(d)** defines “interest” as “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”. Your recent Financial Disclosure Statements filed with the Division of Local Government Services indicate that you do not own or control more than 10% of the profits, assets or stock of Temple University. Therefore, the claim

brought under N.J.S.A. 40A:9-22.5(a) was not addressed by the Board as a potential violation of the Local Government Ethics Law.

Additionally, there was no allegation that you have undertaken any employment or service with Temple University, nor is such employment or service indicated on your Financial Disclosure Statement. Therefore, the claim brought under N.J.S.A. 40A:9-22.5(e) was not addressed by the Board as a potential violation.

The Board undertook a preliminary investigation to determine if there were possible violations of provisions (c), (d), (f), (g) and (i).

A preliminary investigation of the facts and circumstances relevant to this complaint included a review of the allegations made by the complainant. The Board confirmed that you graduated from Temple University and that you have donated funds to your alma mater since graduation. In the fall of 2009, the City of Cape May entered into two negotiated agreements with the Temple University School of Tourism and Facility Management. In exchange for \$101,500, Temple University would provide professional consulting services to the City. N.J.S.A. 40A:11-5 et seq. provides that professional services contracts may be negotiated and awarded by the governing body without public advertising for bids and bidding. You voted in favor of entering into both agreements when the matter was considered by City Council and signed both agreements.

You received a letter dated August 23, 2009 from Temple University Associate Athletics Director for Development Scott Koskoski soliciting a donation to the athletic department. This letter takes note of your prior donations to the University, the partnership between the City of Cape May and the University's School of Hospitality and Tourism Management, and a previously stated desire to establish an academic support program to benefit the University's student-athletes in your parents' names. The letter established the cost of such a program at \$1,000,000. This letter sought financial donations from you in the form of cash or a dedicated life insurance policy. The Board confirmed that there are no buildings, facilities or programs currently bearing the names of you or your parents at Temple University. Further, you were not alleged to have solicited a gift that was given or offered for the purpose of influencing you in the discharge of your official duties. The charge is that Temple University solicited you.

In March 2012, the City entered into an agreement with Wells Appel for Landscape Architecture Design Services. A principal for Wells Appel, Stuart Appel, is an adjunct professor at Temple University's School of Landscape Architecture and Horticulture. This agreement was also a professional services contract and thus not subject to public bidding. The City paid \$18,500 for landscape architecture design work.

The three agreements with Temple University related entities totaled approximately \$120,000.

Upon consideration of the facts and circumstances relevant to this complaint, the Board dismissed this complaint as having no reasonable factual basis.

As noted in the complaint letter and above, N.J.S.A. 40A:9-22.5(i) states:

N.J.S.A. 40A:9-22.5(i) No local government officer or employee 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;

The Board determined that you did not benefit from the agreements between the City of Cape May and Temple University to any greater extent than any gain could reasonably be expected to accrue to any other member of the City of Cape May community.

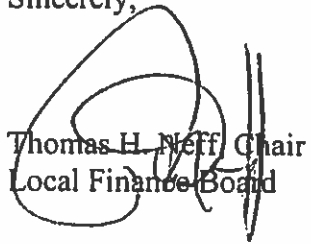
LFB Complaint 12-030 is now closed.

Pursuant to N.J.S.A. 40A:9-22.9, the local government officer or employee against whom a complaint has been filed must be notified of the Board's conclusion regarding a complaint. This letter is a notification that a complaint was filed against you and dismissed. No action is required on your part.

An appeal of this Determination may be made to the Appellate Division of the Superior Court [Rules Governing the Courts of New Jersey, 2:2-3(a)(2)]. Any appeal must be filed within 45 days from the date of service of this Determination.

If you have any questions regarding this matter, please contact Nick Bennett at (609) 292-0479.

Sincerely,



Thomas H. Neff, Chair
Local Finance Board

THN:nb
C12-030.Dismissal.accused