



State of New Jersey

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GOVERNOR

DEPARTMENT OF COMMUNITY AFFAIRS  
DIVISION OF LOCAL GOVERNMENT SERVICES  
LOCAL FINANCE BOARD

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August 10, 1992

Re: Local Government Ethics Law  
Advisory Opinion # 92-011  
Board Determination

Dear Mr.

The Local Finance Board (Board) has reviewed your request seeking an advisory opinion regarding the Local Government Ethics Law. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether a proposed activity or conduct would constitute a violation of the provisions of the law.

You have inquired as to whether a member of the Borough Council, who owns a cleaning service, may participate in drafting bid specifications for cleaning services or if a member of the Council may submit a bid to the Borough if he or she does not participate in drafting the bid specifications.

The Board has determined that both of the proposed activities would constitute a violation of the Local Government Ethics Law. The Board has based its determination on the following analysis.

A member of the Borough Council who wishes to participate in the drafting of bid specifications, knowing that he intends to submit a bid for said service, would stand to violate the following provision.



Under N.J.S.A. 40A:9-22.5 (d) it states:

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 judgement.

The Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., sets forth various statutory requirements for public purchasing of goods and services. Standards for preparation of specifications are set forth in N.J.S.A. 40A:11-13. The law states:

Any specifications for an acquisition under this act, whether by purchase, contract or agreement, shall be drafted in a manner to encourage free, open and competitive bidding.

A specification is considered a concise statement of a set of requirements for a service to be performed. The preparation of specifications is not subject to public review. A municipality has latitude in the method utilized to develop specifications. While the expertise of a Council member, who owns a cleaning service, would help to ensure that concise specifications could be developed, those actions are counter to the provisions of the Local Government Ethics Law if he is intent on submitting a bid. A local government officer may not act in his or her official capacity on any matter where he or she has a direct financial interest that might reasonably be expected to impair his objectivity or independence of judgement. It is obvious that a local government officer, intending to submit a bid for cleaning services, holds a direct financial interest which could reasonably be expected to impair his objectivity or independence of judgement in recommending the scope of specifications.

A member of council may tailor the specifications, in his capacity as a local government officer, to suit his or her own cleaning service in order to succeed in the award of the service contract. In this instance, a local government officer holds a direct pecuniary interest. That is, the Council member would realize a direct financial gain. A representation that such a Council member is rendering "expert advice" on cleaning service specifications is unacceptable when the same Council member holds a direct pecuniary interest in the matter. A local government officer is expected to place official public interests above all others. The Borough may easily request and obtain sample specifications from the New Jersey League of Municipalities (League) to use as a guide for the preparation of cleaning service specifications. The League collects and retains sample specifications used by other municipalities.

The Board has determined that a Council member, who participate in the drafting of cleaning service specifications and who intends to submit a bid, would be in violation of the Local Government Ethics Law.

Secondly, a member of the Council, who owns a cleaning service, may not submit a bid to perform such a service for the municipality he serves. Such a situation may cause an official to yield to the temptation of a direct financial interest and may result in a violation of the following provision of the law.

Under N.J.S.A. 40A:9-22.5 (c) it states:

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.

The fact that a member of the Borough Council is bidding on cleaning services, to be provided to the Borough, may raise a question as to how the bid is secured. The Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., covers numerous issues pertaining to bidding requirements. The process of bidding is subject to various degrees of latitude. Should the service exceed the bid threshold of \$10,300, then the governing body is required to follow stringent public bidding requirements. When public bidding is not required, the governing body decides upon the procedure to be used to secure quotes. The Local Public Contracts Law, at N.J.S.A. 40A:11-6.1, requires an informal quote process for the solicitation of quotations on services costing more than \$1,000. Basically, a contracting unit's governing body must either advertise for bids and draft specifications, or request quotations by posting notices or simply contact vendors via the "yellow pages."

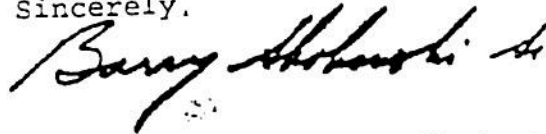
A member of the governing body, having an interest in a cleaning service, could use his or her official position to gain an advantage over others in choosing the means by which quotes would be secured. He or she could also utilize "insider information" as a result of serving as a local government officer and secure an unwarranted advantage over others who submit bids for cleaning services. A public official is disqualified from exercising the authority of his or her office in any matter in which he has a financial interest that conflicts with his public duty. Thus, a member of the Borough Council may not submit bids to the municipality in which he serves as a local government officer. Therefore, even the appearance of impropriety is avoided.

August 10, 1992  
Page 4

Be advised that this opinion is limited to the specific facts described above. If there are additional facts relevant to the situation, please feel free to seek an additional opinion based on the new information. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the question at issue.

If you have any questions regarding this matter, please feel free to contact Patricia Parkin McNamara at (609) 633-6344.

Sincerely,



Barry Skokowski, Sr., Chairman  
Local Finance Board

BS:PPM:jak