

Local Finance Board
Advisory Opinion 92-009
June 19, 1992

Dear Mr. [redacted]:

The Local Finance Board (Board) has reviewed your request for an advisory opinion regarding the Local Government Ethics Law.

You have inquired as to whether a member of the Board of Adjustment may be awarded a contract for computer services for the same local government in which he serves. The Board has determined that such a proposed activity would not constitute a violation of the Local Government Ethics Law. The Board has based its determination upon the following analysis.

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

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.

The Local Government Ethics Law is intended to address matters that would constitute a substantive conflict. The question is whether a member of the Board of Adjustment, engaging in a business activity with the Township, would be in substantial conflict with the proper discharge of his duties in the public interest. An examination of the scope of duties of a member of the Board of Adjustment and the relationship to the scope of computer services is required. The powers of a Board of Adjustment are statutorily limited in N.J.S.A. 40:55D-70. The Board may hear and decide appeals, interpret the zoning map and grant variances.

You have not indicated in your letter if the scope of computer services would pertain to the functions of the Board of Adjustment. You have indicated that many of the municipal offices will be computerized. Typically, the computerization of an office would encompass the installation of a hardware system and software relating to the functions of that particular municipal office. This could include the Clerk, Tax Assessment, Tax Collection, Finance, and Planning and Zoning Offices.

With the exception of the Zoning Office, any business activity involving computer services would not transact with the duties of a member of the Board of Adjustment. There would not be a causative effect, that of substantial conflict, between the provision of computer services and the proper discharge of duties in the public interest as a member of the Board of Adjustment, as long as the services do not include the Zoning Office.

However; how the business has been secured by a member of the Board of Adjustment is another matter which is addressed by the Local Government Ethics 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.

You have indicated in your letter that bids will be secured in compliance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. The Local Public Contracts law sets forth various requirements. Should the scope of services be limited to the installation of hardware and software systems, then the service would be subject to the various bidding requirements. On the other hand, if the scope of services is broad and would encompass a management consultant study, then this would qualify as an "extraordinary, unspecifiable service" which would not be subject to open competitive bidding. At no time, however, could computer services or consulting be considered a professional service under the Local Public Contracts Law.

Purchasing requirements under the Local Public Contracts Law provide latitude in the manner in which bids may be secured. More stringent requirements must be followed for goods and services that reach the bid threshold of \$10,400. Such goods and services must be publicly advertised. The bids must be opened in public. Such a procedure forces a competitive process to occur. The Board of Adjustment member would be required to bid on standard specifications, bids would be opened in public; and, in order to be the successful bidder, he or she would have to meet all of the bid requirements. Such an open competitive process provides safeguards against a local government officer securing an unwarranted privilege for himself.

If the cost of the goods or services are less than the bid threshold, a more informal process is required under the Local Public Contracts Law. It is at this juncture that a local government officer has the greatest opportunity to secure an unwarranted privilege or advantage for himself or others. The primary question is the method the Township plans to utilize to secure bids under this circumstance. If the cost is more than \$1,000 the Township must obtain "price quotes." This is a rather informal process. Quotes may be obtained via telephone requests, written, or by whatever method is necessary. This procedure can be manipulated very easily so that the "paper trail" appears as if the lowest bid is that submitted by the local government officer. A local government officer could secure an unwarranted privilege or advantage by having "inside information or an inside track." This informal bid process would not occur in full public view and could be awarded without the governing body's approval.

Thus, the conclusions that may be reached depend on the manner in which bids are secured. If the bids are secured through the open competitive process of being publicly advertised and opened, a local government officer would not have an opportunity to secure an unwarranted privilege or advantage over other bidders.

It is under this circumstance that the Board advises that the Local Government Ethics Law would not be violated.

The Board cautions that this determination is based on the facts detailed in the correspondence. You are cautioned not to apply this opinion to similar situations and that, 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 further questions regarding this matter, please feel free to contact Patricia Parkin McNamara at (609) 633-6344.

/s/ Barry Skokowski, Sr. Chairman,
Local Finance Board