



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS  
DIVISION OF LOCAL GOVERNMENT SERVICES  
LOCAL FINANCE BOARD  
101 SOUTH BROAD STREET  
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July 8, 1992

Re: Local Government Ethics Law  
Advisory Opinion #92-015  
Board Determination

Dear \_\_\_\_\_:

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, if elected to the Borough Council, you would be able to continue to sell auto parts, via a State contract, to the Borough Public Works, Fire and Police Departments.

The Board has determined that such a proposed activity would 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 business described is that of an auto parts retail store you own, which is located in the same municipality as you intend to seek public office. Auto parts would be sold to the Public Works, Fire, and Police Departments. In your letter, you estimate that total sales would be less than \$5,000 per year. Auto parts would be sold to the Borough as a vendor on State Contract under the State Cooperative Purchasing Program.

As a member of the governing body, it is necessary to examine the scope of duties entailed and to make a determination as to whether substantial conflict would be posed if auto parts were sold to various departments within the Borough. Pursuant to N.J.S.A. 40A:60-6 the powers of the council which could pose substantial conflict are:

- b. . . .control and regulate the finances of the municipality and raise money by borrowing or taxation.
- c. The council shall have all the executive responsibilities of the municipality not placed, by general law or this act, in the office of the mayor.

Additionally, N.J.S.A. 40A:60-7 provides miscellaneous powers:

- b. . . .If the council organizes itself into standing committees or if the council members serve as heads of departments with administrative control over said departments, the administrative code shall specify the powers and duties of such committees or department heads. . . .

A member of the governing body would be in the position of funding or approving an allocation for auto parts in the municipal budget. Further, in carrying out executive responsibilities, a member of the governing body could be in the position of determining whether public works, fire, and police vehicles should be repaired "in-house" thereby, necessitating auto parts, or if vehicle repair should be contracted with a private entity. A member of the governing body would not be able to participate in discussions having to do with vehicle repair, nor would he be able to vote on any matters pertaining to the funding or expenditure of funds for auto parts. He would not be able to act in his official capacity as a Borough Council member on any matters related.

A member of the governing body would not be able to serve as a department head over public works, fire, or police services if he intends to sell goods used by these departments to the Borough. It is established that he would hold a direct financial interest from which he would derive at least a portion of his income. Such an interest might reasonably be expected to impair his objectivity or independence of judgement. A member of the governing body would be disqualified from exercising the authority of his office in any matter in which he has a financial interest that conflicts with his public duty.

Additionally, if elected, as a member of the governing body you would propose to conduct business with the same municipality in which you serve. This may raise a question as to how the business was secured. 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 that you presently are participating in the State Cooperative Purchasing Program selling auto parts. As such, status is held as a State Contractor. As a Cooperative Purchasing Program Subscriber, the Borough may contact vendors directly. There is no need to seek further bids when utilizing a State Contract. A local government officer could recommend or direct an employee of the Borough to his business for selection from a list of vendors offering auto parts. The Borough could merely make a telephone call to your business to place the order under the "veil" of being a "State vendor." Such a relationship would provide an opportunity for an "appearance of impropriety" or, in its fullest potential, may constitute an act of impropriety.

In conclusion, the Board has determined that such a proposed activity would constitute a violation of the Local Government Ethics Law. If you succeed and are elected to the Borough Council, you may no longer continue as a State vendor for the Borough without violating the Local Government Ethics Law.

Be advised that this opinion is limited to the specific acts 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 contact Patricia Parkin McNamara at (609) 633-6344.

Sincerely,



Barry Skokowski, Sr., Chairman  
Local Finance Board

BS:PPM:pw

