

Local Finance Board
Advisory Opinion 93-003
June 16, 1993

Dear [redacted]:

The Local Finance Board (Board) has reviewed your request for 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 any proposed activity or conduct would constitute a violation of the provisions of the law.

You have inquired as to whether an elected Freeholder may also serve as municipal prosecutor in four municipalities within the county he serves as a Freeholder.

You have advised the Board that you are an attorney-at-law of the State of New Jersey and an elected Freeholder in [redacted]. Currently, you also serve as municipal prosecutor in four municipalities within the County.

The Local Government Ethics Law contains no specific restrictions on serving at different levels of government as is the case with a County Freeholder and municipal prosecutor. Secondly, there does not appear to be any reporting relationship between a local prosecutor and a County Freeholder which would lead to a discussion of incompatibility of office or engaging in activity which is in substantial conflict with the proper discharge of duties in the public interest (N.J.S.A. 40A:9-22.5a).

There are [redacted] municipalities in [redacted] County. All of the elected freeholders reside in at least one of these municipalities and, therefore, could potentially favor one of the municipalities. Further, they might have a business in one of the municipalities; thus causing them to favor that municipality as well. It seems unlikely that the mere acceptance of employment as municipal prosecutor might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties on an ongoing basis or, for any general matter which is addressed by the Freeholder Board, any more than residence or business ownership would. Thus, it does not appear to be a violation of section 5e.

Therefore, the activity itself is not restricted by the Ethics Law. There is, however, the potential for the public to believe that a conflict exists concerning specific actions where a Freeholder may give preferential treatment to those municipalities which employ and provide him with at least a portion of his livelihood. Specifically, a complaint may be forthcoming as a result of 5c, securing unwarranted privileges or advantages in receiving the positions in return for possible preferential treatment to those municipalities as Freeholder. It would also seem that the Freeholder could act in his official capacity in a matter where he has a personal and financial involvement that might reasonably be expected to impair his objectivity or independence of judgment where these municipalities are involved to a greater extent than all other municipalities in the county; thus causing a violation of section 5d.

Absent any such allegations, the Board finds that merely holding the elected office of Freeholder and appointed position of municipal prosecutor in four municipalities is not violative of the Local Government Ethics Law.

You are cautioned, however, that the potential for conflict does exist as a result of holding both positions. Specific circumstances may arise causing you to favor one of these municipalities over another in your official capacity as Freeholder. Since you receive compensation from certain municipalities and serve them as a local government employee, acting in your official Freeholder capacity favoring specific municipalities could be viewed as a conflict. You are advised to avoid even the appearance of conflict where your duties as Freeholder may impact individually or specifically only on those municipalities you serve as municipal prosecutor.

Please be advised that this opinion is limited to the specific facts and circumstances contained in your correspondence and cannot be applied to similar facts elsewhere. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the question at issue; thus, any persons presented with similar circumstances should seek a separate opinion from the Board.

At your request, the Board voted to make this advisory opinion public, and you are hereby notified that this is a public document.

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

Sincerely,

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