

Civility
Public Records
Conflicts of Interest

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**New Jersey State League of Municipalities**  
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# CONGRATULATIONS!

You won the election! That was the easy part. Now  
you have to govern . . .

# Civility



# Civility

## Civility? What's that?

- Social contract between government official and the public
  - Civil discussions with colleagues
  - Civil discussions with the public
  - Civil discussions with staff and employees
- Incivility = Incivility

# Good Advice

“..... avoid speaking in a manner and using language that is not conducive to civil discourse.”

Chief Justice John Roberts  
January 22, 2020

# Please don't do this. . .

## Reacting to Audience with Incivility



- Citizen crudely insulting Mayor
- Citizen “rolling eyes” to express displeasure
- How to defuse the situation

# Please don't do this. . .



- Former Teacher of the Year
- Speaks out politely against raise for Superintendent
- Arrested, handcuffed, taken to jail because she exceeded the 3-minute time limit

# John Gillespie's 10 Commandments of Civility

1. Thou shalt not rudely interrupt a colleague midsentence; nor "speak over" a colleague while she/he is speaking.
2. Thou shalt not assume that shrillness of tone is a substitute for substantive dialogue.
3. Thou shalt treat the members of the public with the same courtesy as you would if they were members of your body—and perhaps more importantly, require that they treat you and your colleagues the same way.

# John Gillespie's 10 Commandments of Civility

4. Thou shalt not resort to "zingers" designed solely to embarrass your target.

5. Thou shalt, where possible, explore areas of common ground where legitimate disagreements exist, in an effort to move forward on matters of public importance.

6. Thou shalt not allow legitimate critique of policy and practice to become a personal attack aimed at the person who devised the policy or implements the practice.

# John Gillespie's 10 Commandments of Civility

7. Thou shalt always recognize that your colleagues were also elected, just as you were, and deserve the same level of respect for having run and won.

Example: Remember that the members of the public who elected the colleague that you don't like, may be the same folks who send you packing next time around.

# John Gillespie's 10 Commandments of Civility

8. Thou shalt not ridicule or belittle a colleague, or a member of the public, simply because he or she disagrees with you on an issue.

Example: Believing that the words "under God" belong in the Pledge of Allegiance doesn't make someone a "theocratic moron." Conversely, someone who articulates a position urging that the words "under God" should be excluded from the Pledge of Allegiance, doesn't make that person a "heathen."

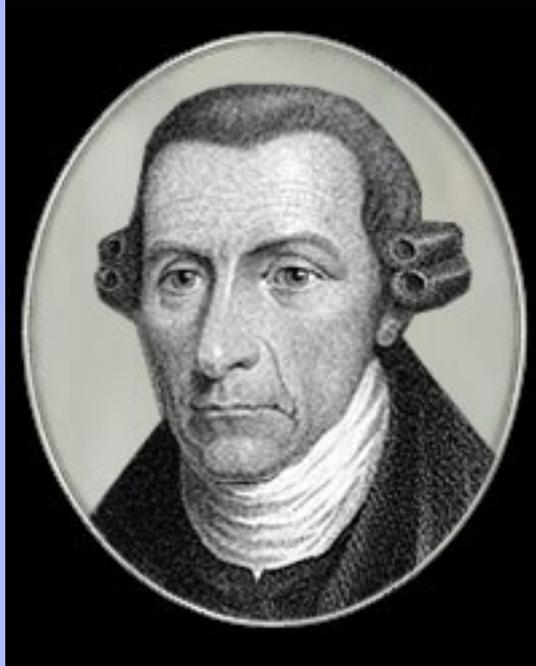
# John Gillespie's 10 Commandments of Civility

9. Thou shalt not pretend something is much more important than it really is, simply to score points with an audience.

10. Thou shalt always remember that it is ok to agree to disagree, and that reasonable people can indeed disagree reasonably.

*Credit for the 10 Commandments of Civility go to John C Gillespie, NJLM Associate Counsel and Partner, Parker McCay (Mount Laurel, NJ), from an article in NJ Municipalities, April, 2019.*

# Public Records



Patrick Henry

*"The liberties of a people never were,  
or ever will be, secure when the transactions  
of their rulers may be concealed from them."*

# Public Records

## What is a Public Record?

- If you have it, it is a public record, unless it falls under an exception.
- Agendas, Minutes, Resolutions, Ordinances, Contracts, Bid Documents, Reports, Correspondence, E-mail, and text messages are all included.

# Public Records

## What is a Public Record?

- Emails are government records.

*McGee v. Township of East Amwell, 416 N.J. Super. 602  
(App. Div. 2010)*

# Public Records

## What is a Public Record?

➤ Settlement agreements are public records.

- **Confidentiality: Public right to know prevails**

*Asbury Park Press v. County of Monmouth*, 406 N.J. Super. 1 (App. Div. 2009), *aff'd*, 201 N.J. 5 (2010)

# Public Records

## What is a Public Record?

- There is NO exception for records that might be embarrassing.

# Public Records

## What is a Public Record?

- There is NO exception for records stored on a personal device or that originate from/are sent to a personal email account

“Concluding these email logs contain government records under OPRA prevents government officials from circumventing OPRA by using personal email accounts and sustains the legislative intent behind the statutory scheme. This decision may also discourage government officials from using their personal devices, email accounts, or cell phones (texts) to conduct government business to avoid public disclosure otherwise permitted by OPRA.”

*Rosetti v. Ramapo-Indian Hills Reg'l High Sch. Bd. of Educ.*, \_\_ N.J. Super. \_\_ (App. Div. 2025) decided January 27, 2025.

# Public Records

## NOT Public records

- The definition of a government record contains an exception for, “inter-agency or intra-agency advisory, consultative, or deliberative material.”
- Drafts, policy documents and other documents relied upon for decision making are exempt from disclosure.

*Be sure to label all draft documents as “draft” so they can be identified and protected from disclosure*

# Public Records

## NOT Public records

- Records within the attorney-client privilege, and attorney work product.
  - *The privilege protects confidential communications between the attorney and the client. Merely copying the attorney is not necessarily enough; the communication must in some fashion contain or solicit legal advice.*
  - *The privilege does not apply to attorney bills or invoices.*

# Public Records

## Responding to a request

- The Municipal Clerk **is** the Custodian of Records.
- The request must identify the record requested.
- If the record does not exist, OPRA does not apply.
- There is no requirement to research or to create a record.

# Public Records

## Record does not exist

- Requestor seeks a record that does not exist, i.e., a log of all e-mail messages between certain dates involving specific officials.
- Municipal Clerk denies the request on the grounds that no such record exists.
- Requestor sues to compel the creation of the e-mail log.
- Trial Court rules that the creation of the e-mail log would be no substantial burden to the municipality and orders that it be created
- Appellate Division reverses, holding no obligation to create a record that does not exist.
- Supreme Court says – produce the record *if* it is not a burden

Paff v Galloway Township  
NJ Supreme Court June 30, 2017

# Public Records

- A Mayor or member of the Governing Body does NOT need to submit an OPRA request in order to obtain a document.
- Exceptions apply – such as personnel files and medical records
- Provide to one = provide to all . . . .

# Public Records

## Working **WITH** the Custodian

**Submit a request:**

**Provide within 7 days all copies of ordinances, resolutions, reports, memoranda, notes, e-mail messages, relating in any way to the design, maintenance or motor vehicle accidents occurring at the intersection of Main Street and County Route 555 since January 1, 1990, including all personnel and disciplinary files related to any police officer or other public employee involved in any such accident.**

**But, be reasonable and be specific**

# Public Records

## Common Law Right of Access

- Balancing Test
- Public right to know
- Need for confidentiality
  - *In the Matter of Seven State Troopers, App Div, February 25, 2010*
  - *Paff v Borough of Garwood*

# Public Records

## OPRA v. Common Law

- Common law right of access is unaffected by OPRA. They operate independent of each other. Many requests for records now assert both laws. Thus, any response must consider both if the requestor is seeking access under both.
- OPRA: release as to one = release as to all
- Common law: release as to one = release as to that one only

# Public Records

## Going to Court

**Superior Court has Jurisdiction**

**BUT**

**Complaint must be filed within 45 days of the denial of access to the requested record.**

*Mason v. City of Hoboken, NJ Supreme Court, July 22 2008*

**While there is a 45-day limitation on filing in Superior Court, the Government Records Council has no such restriction. Thus, a complaint to the GRC may be filed at any time.**

*Knehr v. Township of Franklin,  
GRC Complaint No. 2012-38 (Dec. 18, 2012)*

# Public Records

## Record Retention Requirements

**NJ Division of Archives and Records Management**

[www.nj.gov/state/darm](http://www.nj.gov/state/darm)

**Municipal Agencies Records Retention Schedule**  
**NJ Uniform Electronic Transactions Act (UETA)**

**Circular Letter 01-01-ST**

**E-Mail**

**Circular Letter 03-10-ST**

# eMail & Social Media Issues



Fun and Dangerous

# ELECTRONIC COMMUNICATIONS

## The Perils of Emails

E-mails are public records so long as they are “made, maintained or kept on file in the course of his [or her] or its official business.” They include emails from both governmental **and personal email addresses.**

*297 Palisades Avenue Urban Renewal Company LLC v. Borough of Bogota  
Law Division, Bergen County, March 26, 2014  
(Hon. Peter E. Doyne, A.J.S.C.)*

# ELECTRONIC COMMUNICATIONS

## The Perils of Emails

- “Time for some traffic problems in Fort Lee”

Bridget Anne Kelly

- “Got it.”

David Wildstein

Both emails sent from personal accounts

# ELECTRONIC COMMUNICATIONS

## The Perils of Emails

- **E-Mail is a document**
- **E-Mail on public business is a public record**
- **Even on a personal computer**
- **E-Mail is really not private**
- **E-Mail is discoverable**
- **E-Mail can come back to haunt you**
- **E-Mail can be embarrassing**
- **E-Mail exchanges can be a meeting under OPMA**

# ELECTRONIC COMMUNICATIONS

## The Perils of Emails

**DANGER ... DANGER ... DANGER**

UNINTENTIONALLY chatty – disclosing personal information ..... Yours or someone else's.

Use a telephone.

# ELECTRONIC COMMUNICATIONS

## Tip #1

**Do not compose – and especially DO NOT SEND an e-mail when you are angry.**

# ELECTRONIC COMMUNICATIONS

## Tip #2

**Check and then check again the name and address of your intended recipient.**

**And then check it again before you SEND.**

# ELECTRONIC COMMUNICATIONS

## Tip #3

**Verify the attachment to make sure that it is the appropriate and correct item before you attach it.**

**To avoid errors, never attach something named “Document.pdf” or “Document.doc” or “Scan478897656879” – make sure your documents are named so that you can easily identify the attachment.**

# ELECTRONIC COMMUNICATIONS

## Tip #4

**Do not email inside jokes or use derogatory nicknames to reference others, whether officials, co-employees, citizens, consultants.**

**Assume that your email will be read by the very person that you are referencing or about whom you are making the joke.**

**Assume that a reporter will obtain your email and print it in the paper.**

# ELECTRONIC COMMUNICATIONS

## Tip #5

### Avoid DANGER phrases

- I really shouldn't put this in writing.
- Delete this e-mail as soon as you have read it.
- Don't tell anyone else, but .....
- Don't ask. You don't want to know.
- **This is for your eyes only.**

# ELECTRONIC COMMUNICATIONS

## Tip #6

**After composing your e-mail, save it as a draft and go back and re-read it a half-hour later. Then remember all of the other rules as you edit it and before you send it.**

# ELECTRONIC COMMUNICATIONS

I do my best  
proofreading  
after I hit 'send'.



# ELECTRONIC COMMUNICATIONS

Careful what you say/post!

- OPRA applies to all electronic communications, not just emails
  - Text messages
  - Social media posts

# ELECTRONIC COMMUNICATIONS

In all electronic communications, e-mail, Twitter, Facebook, social media, recall the words from the New Testament, Luke 8:17

“For nothing is hidden,  
that will not be revealed;  
nor anything secret,  
that will not be known  
and come to light.”

# Conflicts of Interest





We do live in a fishbowl .....  
..... and EVERYBODY is watching!!

# Conflicts of Interest

## Ethical Conduct

- Ethical conduct is more than merely meeting the standards required by law.
- Ethical conduct means doing the *right* thing simply because it is the right thing to do.
- Violating legal standards for conduct means that legal sanctions can be imposed.

# Conflicts of Interest

## Duties of the Public Official

- FROM THE OATH OF OFFICE: to faithfully, impartially and justly perform all of the duties of the office.
- The official is a trustee for the town's inhabitants, and has a duty to protect the rights of those inhabitants.
- “Honesty and integrity in the performance of their duties is an absolute charge upon public officials and employees.” *Driscoll v. Burlington-Bristol Bridge Co.*, 8 N.J. 433, cert. denied, 344 U.S. 838 (1952).
- The public official must place the interests of the public above all others.

# Conflicts of Interest

## Sources of Law

- Common law (court cases)
- Statutes
  - Local Government Ethics Law, *N.J.S.A. 40A:9-22.1 et seq.* (codifies common law)
  - Municipal Land Use Law, *N.J.S.A. 40:55-1 et seq.*
  - Criminal laws

# Conflicts of Interest

## Common Law

- Duties of the public official: to faithfully, impartially and justly perform all of the duties of the office. The official is a trustee for the town's inhabitants, and has a duty to protect the rights of those inhabitants. "Honesty and integrity in the performance of their duties is an absolute charge upon public officials and employees."

*Driscoll v. Burlington-Bristol Bridge Co.*, 8 N.J. 433, cert. denied, 344 U.S. 838 (1952).

# Conflicts of Interest

## Common Law

- The public official must place the interests of the public above all others.
- If there is a *possibility* that a personal interest might hinder the official's ability to serve the public interest above all else, the official must recuse
- What matters is not whether the official actually feels conflicted, but whether “an impartial and concerned citizen, intelligent and apprised of all the acts in the situations, feel that there was the potential for non-objectivity on the part of the officeholder making a decision”

*Wyzykowski v. Rizas, 132 N.J. 509, 523 (1993).*

# Conflicts of Interest

## Common Law

### ➤ Four situations that require disqualification:

- Direct pecuniary interest: financial tie is such that the official will or could realize a financial gain or loss
- Indirect pecuniary interest: a financial tie exists between the official and the matter under consideration but it is not so immediate that the official will realize a gain or loss
- Direct personal interest: palpable interest that is not financial, but is of immediate and unique importance to the official
- Indirect personal interest: instances in which the official's judgment may be affected by membership in a given organization or a desire to help that organization further its policies

# Conflicts of Interest

## The Local Government Ethics Law

N.J.S.A. 40A:9-22.1 *et seq.*

- Intended to codify prior common law

### **§ 40A:9-22.2. Findings, declarations**

The Legislature finds and declares that:

- Public office and employment are a public trust;
- The vitality and stability of representative democracy depend upon the public's confidence in the integrity of its elected and appointed representatives;
- Whenever the public perceives a conflict between the private interests and the public duties of a government officer or employee, that confidence is imperiled;

...

# Conflicts of Interest

## The Local Government Ethics Law

### ➤ Who is covered:

- All elected officials
- Anyone employed by or serving on a board, commission, agency, etc. that performs functions other than of a purely advisory nature
- Anyone who is a managerial executive employee of a local government agency
- Library boards of trustees

# Conflicts of Interest

## The Local Government Ethics Law

### ➤ Who is not covered:

- School boards/school employees (subject instead to Schools Ethics Law)
- Members of purely advisory boards

# Conflicts of Interest

## The Local Government Ethics Law

➤ What is prohibited:

**§40A:9-22.5. Provisions requiring compliance by local government officers, employees**

- 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;

# Conflicts of Interest

## The Local Government Ethics Law

➤ What is prohibited:

**§40A:9-22.5. Provisions requiring compliance by local government officers, employees**

- 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;

# Conflicts of Interest

## The Local Government Ethics Law

➤ What is prohibited:

**§40A:9-22.5. Provisions requiring compliance by local government officers, employees**

- 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;

# Conflicts of Interest

## The Local Government Ethics Law

➤ What is prohibited:

**§40A:9-22.5. Provisions requiring compliance by local government officers, employees**

- 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;

# Conflicts of Interest

## The Local Government Ethics Law

➤ What is prohibited:

**§40A:9-22.5. Provisions requiring compliance by local government officers, employees**

- f. No local government officer or employee, or 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 . . . [it] was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties.**

*[does not apply to campaign contributions]*

# Conflicts of Interest

## The Local Government Ethics Law

➤ What is prohibited:

**§40A:9-22.5. Provisions requiring compliance by local government officers, employees**

- 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 with which he is associated

# Conflicts of Interest

## The Local Government Ethics Law

### ➤ What is prohibited:

#### **§40A:9-22.5. Provisions requiring compliance by local government officers, employees**

- h. No local government officer or employee or business organization in which he has an interest shall represent any person or party other than the local government in connection with any cause, proceeding, application or other matter pending before any agency in the local government in which he serves. This provision shall not be deemed to prohibit one local government employee from representing another local government employee where the local government agency is the employer and the representation is within the context of official labor union or similar representational responsibilities;

# Conflicts of Interest

## The Local Government Ethics Law

➤ What is **not** prohibited:

### **§40A:9-22.5. Provisions requiring compliance by local government officers, employees**

- i. No local government officer 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;**

# Conflicts of Interest

## The Local Government Ethics Law

➤ What is **not** prohibited:

### **§40A:9-22.5. Provisions requiring compliance by local government officers, employees**

- j. No elected local government officer shall be prohibited from making an inquiry for information on behalf of a constituent, **if no fee, reward or other thing of value is promised to, given to or accepted** by the officer or a member of his immediate family, whether directly or indirectly, in return therefor; and

# Conflicts of Interest

## The Local Government Ethics Law

➤ What is **not** prohibited:

**§40A:9-22.5. Provisions requiring compliance by local government officers, employees**

- k. Nothing shall prohibit any local government officer or employee, or members of his immediate family, **from representing himself, or themselves, in negotiations or proceedings concerning his, or their, own interests.**

# Conflicts of Interest

## The Municipal Land Use Law

N.J.S.A. 40:55D-1 *et seq.*

- Applies only to quasi-judicial bodies (zoning board, planning board) established under the MLUL
- *N.J.S.A.* 40:55D-23b: “No member of the Planning Board shall be permitted to act on any matter in which he has, either directly or indirectly, any personal or financial interest.”
- *N.J.S.A.* 40:55D-69: “No member of the board of adjustment shall be permitted to act on any matter in which he has, either directly or indirectly, any personal or financial interest.”

Broader than the LGEL: The statutory bar “is not confined to instances of possible material gain but . . . extends to **any situation in which the personal interest of a board member in the ‘matter’ before it, direct or indirect, may have the capacity to exert an influence on his action in the matter.**” *Zell v. Borough of Roseland*, 42 N.J. Super. 75 (App. Div. 1956).

# Conflicts of Interest

## Additional Important Concepts

➤ Appearance of impropriety:

- “It is the **mere existence of the interest, not its actual effect**, which requires the official action to be invalidated.” *Township of Lafayette v. Board of Chosen Freeholders of the County of Sussex*, 208 N.J. Super. 468 (App. Div. 1986).
- What matters is not just whether the official actually feels conflicted, but **whether “an impartial and concerned citizen, intelligent and apprised of all the acts in the situation, would feel that there was the potential for non-objectivity on the part of the officeholder making a decision.”**

# Conflicts of Interest

## Additional Important Concepts

- Not every interest creates a conflict of interest:
  - The appearance of impropriety must be “something **more than a fanciful possibility**. It must have a reasonable basis.” *Higgins v. Advisory Committee on Professional Ethics of the Supreme Court of New Jersey*, 73 N.J. 123 (1977).

# Conflicts of Interest

## Additional Important Concepts

- Analysis is highly fact-sensitive: Whether a particular interest is sufficient to disqualify a public official will always depend on the circumstances of the particular case: “The question will always be whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the official to depart from his sworn public duty.” *Van Itallie v. Franklin Lakes*, 28 N.J. 258 (1958).

*Therefore*

- Not problematic:
  - *de minimis* situations, such as an official employed by Verizon voting to pay the phone bill, or an official employed by PSE&G voting to pay the electric bill
  - situations where the official’s interest is not unique but is shared by other members of the public, such as an official participating in matters related to the adoption of a redevelopment plan when he owns one of the approximately 1,000 homes in the redevelopment area

# Conflicts of Interest

## Additional Important Concepts

- Acting in a legislative v. quasi-judicial capacity
  - Elected officials represent a variety of constituencies and are charged with solving a variety of problems.
  - In the context of local government and in making decisions, it is not unusual for an elected official to vote on legislation promised in a campaign or to vote on legislation which benefits a particular group of constituents—sometimes even including that public official.
  - A disqualification should not result from ‘a personal interest in the welfare of the community’ nor ‘the interest of nearly all businessmen in the borough in the general improvement of their businesses.’”

# Conflicts of Interest

## Guideposts

- There are (almost) no blanket rules:
  - each situation must be evaluated on its **specific facts**, and the answer will be dictated by a **practical feel of the situation**.

# Conflicts of Interest

## Guideposts

- Not every interest has the capacity to entice a public official to depart from his sworn duty:
  - Question is always whether the official has a **second, unique interest different from other officeholders** which sets that officeholder apart, or an **interest not shared with other members of the public.**

# Conflicts of Interest

## Guideposts

- Disqualification should be not required willy-nilly:
  - “Local governments would be seriously handicapped if every possible interest, **no matter how remote and speculative**, would serve as a disqualification of an official. If this were so, **it would discourage capable men and women from holding public office**...[Courts] must also be mindful that **to abrogate a municipal action at the suggestion that some remote and nebulous interest is present, would be to unjustifiably deprive a municipality and many important instances of the services of its duly elected or appointed officials.**

*Van Itallie v. Franklin Lakes*, 28 N.J. 258 (1958).

# Conflicts of Interest

## Scenarios

### ➤ Scenario 2A:

- **Ok:** In a town with multiple rescue squads, vote on general appropriations for all the squads by official who is a member of one of them.

### ➤ Scenario 2B:

- **Not ok:** Vote by that same official on a measure concerning the allocation of funds among the various squads.

# Conflicts of Interest

## Scenarios

➤ Scenario 1A:

- **Ok:** Vote by official to build park in official's neighborhood.

➤ Scenario 1B:

- **Not ok:** Vote by that same official to build park next to official's house.

# Conflicts of Interest

## Scenarios

➤ Scenario 3:

- **Ok:** Vote by mayor in favor of proposed assisted living facility when mayor said he might seek to have his mother admitted to the facility if it was approved.
  - There was no showing that the mayor depended on the developer of the facility to care for his mother, and the comment did not distinguish the mayor from any other member of the community

# Conflicts of Interest

## Process if a Conflict Exists

- Requirement is **complete recusal**:

“[A]ny person who is precluded from voting in any matter because of a conflict of interests or the appearance of same should not in any way participate in any of the discussion involved in same. . . . [D]isqualification as to action is disqualification as to participation and the only sensible and sure course of action is to remove oneself totally from the proceedings as to an item in which there is a question of self-interest or the appearance thereof.”

*Michael A. Pane, Local Government Law, 34 N.J. Practice §9:8 (4th Ed. 2015)(quoting Darrell v. Governing Body of Clark Twp., 169 N.J. Super. 127 (App. Div. 1979)).*

# Conflicts of Interest

## Process if a Conflict Exists

- I have a conflict; can I still participate in the discussion as long as I don't vote? **No**
- I have a conflict; can I still preside over the meeting as long as I don't participate in the discussion or vote? **No**
- I have a conflict, can I stay on the dais as long as I don't preside, participate in the discussion or vote? **No**
- I have a conflict and I've completely recused myself, can I address the public body as a member of the public? **Yes, with caveats**
- I have a conflict and I've completely recused myself, do I have to leave the room? **No, with caveats.** There is no legal requirement to leave the room, but it's the better practice
- I have a conflict and I voted, but my vote wasn't needed and the measure would have passed anyway. Does the action stand? **No! Action is void.**

# Conflicts of Interest

## Financial Disclosure Statement

- Local government officers shall annually file a financial disclosure statement.
- Due each April 30th
- File electronically
- It is a Public Record
- [http://fds.state.nj.us/njdca\\_prod/fdssearch.aspx](http://fds.state.nj.us/njdca_prod/fdssearch.aspx)
- Expect financial sanctions for failure to file on time.

# Conflicts of Interest

## Financial Disclosure Statement

- Each **source** of income, earned or unearned, exceeding \$2,000
- received by the local government officer or a member of his immediate family during the preceding calendar year.
- Individual client fees, receipts or commissions received through a business organization need not be separately reported as sources of income.

# Conflicts of Interest

## Financial Disclosure Statement

- The name and address of all business organizations in which the local government officer or a member of his immediate family had an interest during the preceding calendar year

# Conflicts of Interest

## Financial Disclosure Statement

- The address and brief description of all real property in the State in which the officer or a member of his immediate family held an interest during the preceding calendar year.

# Conflicts of Interest

## Penalties for Violating the LGEL

- An elected local government officer or employee found guilty ... shall be fined not less than \$100.00 nor more than \$500.00
- Expect that the range of penalties will be increased, probably to a \$10,000 maximum, the same as the State Ethics Code

# Conflicts of Interest

## Criminal Code

N.J.S.A. 2C:27-10

A person commits a crime if:

- the person, as a public servant, directly or indirectly, **knowingly** solicits, accepts or agrees to accept any benefit, whether the benefit inures to the public servant or another person, to influence the performance of an official duty or to commit a violation of an official duty.

# Conflicts of Interest

## Criminal Code

A public servant commits a crime if:

- Under color of office and in connection with any official act ... the public servant directly or indirectly knowingly receives any benefit – whether to the public servant or another person – to influence the performance of an official duty or to commit a violation of an official duty.

# Conflicts of Interest

## Criminal Code

[The offense is a] crime of the second degree, except that if the benefit solicited, accepted or agreed to be accepted or received is of a value of \$200.00 or less, any offense .... Is a crime of the third degree.

*N.J.S.A. 2C:27-10e*

So ..... the crime exists at all levels, but the potential penalty is less if the value was under \$200.00

# Conflicts of Interest

## Situation # 1

Employee places an order for office supplies, and the supplier provides a “gift” based on the size of the order.

The employee receives the “gift” and keeps it, because it was not part of the supplies ordered for the municipality.

Is that improper?

# Conflicts of Interest

## Situation # 2

After the meeting several of the governing body members and the attorney and the engineer to 52:27D-301 the local diner for coffee and a hamburger.

At the end of the evening, the attorney or the engineer picks up the check.

Is that trivial?

Does that influence the public officials?

# Conflicts of Interest

## Situation # 3

One of the town officials asks two Public Works employees to work on Saturday to cut his lawn .....

.... And offers to pay them for the work

.... The two employees have their own “lawn service”

.... How do you avoid the “appearance” of impropriety

# Conflicts of Interest

## Situation # 4



- The Developer calls and thanks you for all of your cooperation during the process of obtaining the necessary approvals. Now that the application process is completed and permits issued, he remembered that your son was a big baseball fan. They offer you two tickets for the Phillies-Yankees-Mets (team of your choice) game on Saturday night, noting that they are GREAT seats.
- Any difference if it was for a Minor League game?
- How about a coupon for a coffee at a WaWa?

# Conflicts of Interest

## Situation # 5

- A contractor who does work for the municipality mentions to you that he was contacted by Council Member A who wants some work done on his house and who said “I expect you to give me a good price, because you know that I have to vote on your contracts with the town.”
- Is the Council Member corrupt or just stupid?
- What do you do?
- Do you have any obligation to report it to anyone?

# Conflicts of Interest

RECAP

# Conflicts of Interest

## The Bill Kearns “Can You Justify What You Did” Test

If your worst political enemy (or even your best friend) found out what you did and raised the issue at a public meeting, would you be hard-pressed to explain why you did what you did and why it's okay? If yes, don't do it.

# Conflicts of Interest

## The Bill Kearns “But For” Test

Do you really think that you would have received that gift if you were not in a position to influence something for the gift giver? If you would not have received the gift, except for your official position ..... then you probably should not accept it.

# Conflicts of Interest

## The “Squirm” Test”

If you feel yourself starting to squirm a bit while the situation is being described to you, in all likelihood a conflict exists (or at least an appearance of one).

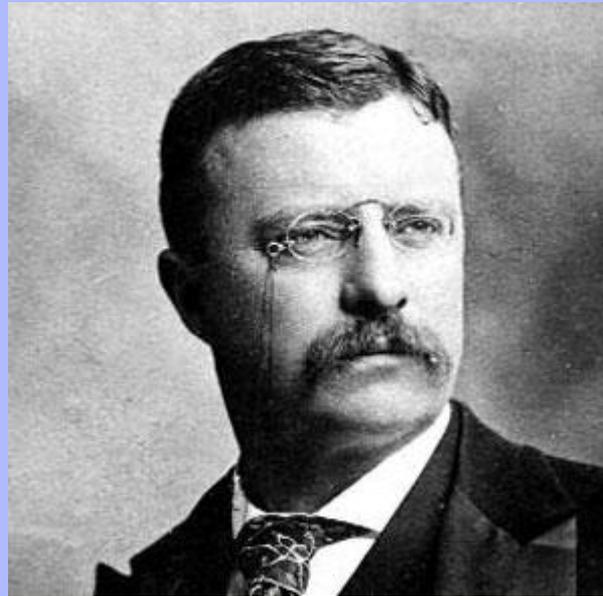
# Conflicts of Interest

Discretion is (most of the time) the  
Better Part of Valor

Could someone legitimately question which side of the table you're on, or which hat you're wearing? If yes, don't do it.

*BUT, be careful not to disqualify yourself just because there's some remote possibility someone might point a figure and say "I'accuse!"*

# Conflicts of Interest



The one thing that I want to leave my children is my good name.

Theodore Roosevelt  
Governor of the State of New York  
President of the United States

