

***Tyler & Carmeli, P.C.***  
***Attorneys At Law***  
***1 AAA Drive, Suite 204***  
***Robbinsville, New Jersey 08691***  
***Phone: (609) 631-0600***  
***Fax: (609) 631-0651***  
***mcarmeli@tcglaw.com***  
***Margaret B. Carmeli, Esq.***

***Gertner, Mandel & Peslak, LLC***  
***1215 East Veteran Highway***  
***Jackson, New Jersey 08561***  
***Phone: (732) 363-3333***  
***Fax: (732) 363-3345***  
***apeslak@gmplaw.net***  
***Arthur M. Peslak, Esq.***

### NJWA Ethics Panel Outline

#### I. Local Government Ethics Law (N.J.S.A. 40A:9-22)

##### A. Introduction

1. The Local Government Ethics Law governs the ethical conduct of local government officers and employees.
2. A local government officer is any person
  - (1) elected to any office of a local government agency;
  - (2) serving on a local government agency which has the authority to enact ordinances, approve development applications or grant zoning variances;
  - (3) who is a member of an independent municipal, county or regional authority; or
  - (4) who is a managerial executive or confidential employee of a local government agency, as defined in section 3 of the "New Jersey Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-3).
- b) A local government employee is, any person not a local government officer, that is employed by or serving on a local government agency.
- c) An individual may be a local government employee or officer even if only employed part-time and not compensated.

##### B. Prohibited Activities under the Local Government Ethics Law

1. 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.
2. An independent local authority may not, for a period of one year after a former member leaves office:

- a) Award a contract, not publicly bid, to the former member of that authority or a business in which the former member has an interest;
  - b) Allow the former member, or the business in which he has an interest, to appear before the local authority on behalf of another; or
  - c) Employ a former member, or the business in which he has an interest, for compensation except pursuant to open competitive examination under the law
3. 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;
  4. No local government officer or employee shall act in his official capacity in any matter where he, an immediate family member, or a business organization in which he has an interest, has financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment;
  5. 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;
  6. No local government officer or employee, member of his immediate family, or business organization in which he has an interest, shall solicit or accept anything of value based upon an understanding that the thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties.
    - a) This provision does not apply to campaign contributions provided the officer or employee has no reason to believe they were given with the intent to influence the officer or employee in the discharge of his official duties;
  7. No local government officer or employee shall use his public office or employment, or any information acquired therefrom and not available to the public to secure financial gain for himself, immediate family members, or any business organization with which he is associated;
  8. No local government officer or employee or business organization in which he has an interest shall represent any person other than the local government in connection with any matter pending before any agency in the local government in which he serves.

### C. Limitations on Prohibitions

1. A local government officer does not violate the Local Government Ethics Law if he participates in the enactment of any matter required to be voted upon or which is subject to executive approval or veto, and no

material or monetary gain accrues to him as a member of a business greater than that which could reasonably be expected by any other member of such business.

2. An elected local government officer is not prohibited from making an inquiry for information on behalf of a constituent if nothing is given to the officer, or his immediate family, in return.

3. A local government officer or employee is permitted to represent him or herself in negotiations or proceedings concerning his or her own interests.

## II. State Conflicts of Interest Law

A. A state officer, employee, or member of the Legislature or any family member, partner or associate may not accept gifts which that person has reason to believe is intended to influence the person in the performance of public duties.

B. A state officer, employee or member of the Legislature, or any business in which the above has an interest or any employee of that business may not represent another person in the negotiations for the acquisition or sale of property by the State.

C. With certain exceptions, a state officer, employee or member of the Legislature, or any business in which the above has an interest or any employee of that business may not represent another individual before any state agency.

D. No former state officer, employee or member of the Legislature, or any business in which the above has an interest or any employee of that business may represent another individual in any matter with respect to which such former state officer, employee or Legislator “shall have made any investigation, rendered any ruling, given any opinion, or been otherwise substantially and directly involved at any time during the course of his office or employment.”

## III. Official Misconduct

A. The official misconduct law is essentially the criminal law counterpart to the Local Government Ethics Law and State Conflict of Interest Law.

1. A public servant is guilty of official misconduct when, with the purpose of obtaining a benefit for himself or another or injuring another or depriving another of a benefit:

a) The public servant commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized or he is committing such act in an unauthorized manner, or

b) The public servant knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

2. A public servant is defined as “any officer or employee of government, including legislators and judges, and any person participating as juror,

advisor, consultant or otherwise, in performing a governmental function, but the term does not include witnesses.”

- a) Government, as used in the definition of public servant, includes any branch, subdivision or agency of the State and local government.
- b) Therefore, licensed operators of municipal water and sewage authorities would qualify as public servants

B. Consequences for Conviction of Official Misconduct

1. Official misconduct is generally a second degree crime, but is a third degree crime if the benefit obtained or deprived has a value of \$200.00 or less.
2. A second degree crime carries a sentence of five (5) to ten (10) years

IV. Municipal Disclosure Ordinances

A. Some municipalities have adopted ordinances requiring disclosure of political contributions when filing a development application.

B. Lawrence Township

1. Requires an applicant for most land use applications to file Contribution Disclosure Statement for all developers, associates of developers, “professionals,” and all persons and entities with an enforceable present or future interest in the subject property.
2. The Contribution Disclosure Statement contains a list of the amount, date, and recipient of any and all contributions to political organizations or candidates acting within Mercer County or any PAC supporting campaigns in Mercer County made within four years prior to the filing of the application.
3. The Contribution Disclosure Statement is also required by any person petitioning for a change in zoning law if such a change would impact land in which the petitioner holds a proprietary interest.
4. The Contribution Disclosure Statement is deemed a public record.

C. Greenridge Estates, L.L.C. v. The Mayor and Township Council, the Township of Monroe

1. The case involves the appeal of an ordinance which required disclosure of political contributions from applicants and applicants’ professionals for any land development application.
2. Freedom of Association
  - a) The Court found no rational connection between the powers granted to Monroe by the ordinance (to compel disclosure of political contributions of land development applicants) and the state interest it seeks to protect (elimination of the appearance that

an applicant is getting favorable treatment by a board member based on political contributions).

b) The ordinance was overly broad and did not protect the interest by the least restrictive means because it required disclosure of all political contributions and Monroe has little to no interest in nominal donations and donations to out-of-state candidates.

c) The ordinance was under-inclusive because it did not also apply to objectors.

d) The ordinance violated the freedom of association protected by the First Amendment of the United States Constitution.

### 3. Right to Privacy

a) The Court found that the political contributions are protected as private facts as long as they fall below the minimum donation which requires disclosure by statute. Since the ordinance required disclosure of even minimal donations, it violated the right to privacy.

## V. Pay to Play Laws

A. The Pay-to-Play laws, otherwise known as the New Jersey Campaign Contributions and Expenditures Reporting Act, restrict

1. Business entities from entering into certain contracts with government agencies based on their recent campaign contribution activities, and
2. Contributions by business entities engaged in certain contracts with government agencies

B. Contracts subject to Pay-to-Play

1. Any State contract in excess of \$17,500.00
2. Any Legislative contract requiring approval by a presiding officer of either or both Houses in excess of \$17,500 that is not awarded through a fair and open process
3. Any County or Municipal contract in excess of \$17,500 that is not awarded through a fair and open process
4. Any redevelopment agreement with a State redevelopment agency entered into after November 15, 2008

C. Contributions subject to Pay-to-Play

1. Only reportable contributions, which are those that exceed \$300 or are made in case, are subject to Pay-to-Play.
2. No reportable contributions may be made by a business entity during the term of a contract subject to Pay-to-Play.

3. The Legislature, County or Municipality may not enter a contract with a business entity that made a reportable contribution to a party below within the year preceding the contract
4. The State may not enter a contract with a business entity that made a reportable contribution to a party below:
  - a) within the eighteen (18) months preceding the initiation of negotiations,
  - b) during the term of office of the Governor or Lieutenant Governor, or
  - c) Within the eighteen months immediately preceding the last day of the term of office of Governor and Lieutenant Governor, in which case such prohibition shall continue through the end of the next immediately following term of the office of Governor and Lieutenant Governor, in the case of contributions to a candidate committee or election fund of the holder of one of those offices, or to any State or county political party committee of a political party nominating such Governor and Lieutenant Governor in the last gubernatorial election preceding the commencement of the latter term.
5. State – Contributions subject to Pay-to Play at the State level are those
  - a) To a candidate or a holder of the office of Governor (including candidate committees or election funds)
  - b) To a candidate or a holder of the office of Lieutenant Governor (including candidate committees or election funds)
  - c) To a State, County, or Municipal political party committee
  - d) To a legislative leadership committee
6. Legislature – Legislative contributions subject to Pay-to Play are those:
  - a) To a candidate or joint candidates committee established by the presiding officer
  - b) To a legislative leadership committee established by the presiding officer
  - c) To a State political party committee of the same political party as the presiding officer
7. County – Contributions subject to Pay-to Play at the County level are those:
  - a) To a County political party committee of the same political party as any person serving in an elected public office in that County when the contract is awarded

b) To a candidate or joint candidates committee of any person serving in an elected public office in that County when the contract is awarded

8. Municipal – Contributions subject to Pay-to Play at the Municipal level are those

a) To a Municipal political party committee of the same political party as any person serving in an elected public office in that Municipality when the contract is awarded

b) To a candidate or joint candidates committee of any person serving in an elected public office in that Municipality when the contract is awarded

D. Business Entity

1. A business entity includes:

a) A natural or legal person

b) the spouse or child of a natural person

c) Corporation, limited liability company or any legal commercial entity formed under the laws of New Jersey, or any state or foreign jurisdiction

d) principals owning 10% or more of profits, assets or stock of a business entity, as appropriate

e) subsidiaries controlled by the business entity

f) political organizations controlled by a business entity (other than candidate committee, election fund or political party committee,

2. An “interest” means more than 10% of profits, assets or stock of a business entity, as appropriate

E. Refunds

1. Where a business entity has made a contribution while under contract or has made a contribution rendering it ineligible for contracts subject to Pay-to-Play, the business entity may request repayment in writing. Repayment must be received within sixty (60) days of Legislative, County or Municipal contributions, or within thirty (30) days of State contributions.

a) However, there can be no cure for contributions made within sixty (60) days of a gubernatorial primary or general election

F. Disclosure

1. No later than ten (10) days prior to entering into a contract subject to Pay-to-Play with a State agency, or ten (10) days prior to the date of a

resolution by a local agency awarding a contract subject to Pay-to-Play, the business entity must submit a list of reportable contributions.

2. For the purpose of making disclosures, contributions from a business entity include contributions by

- a) The spouse or child of a natural person, where the business entity is a natural person,
- b) A person or business entity with an interest (as defined above) in the business entity
- c) The principals, partners, officers, directors and trustees of a business entity
  - (1) And their spouses
- d) A subsidiary controlled by a business entity
- e) A continuing political committee controlled by a business entity

#### G. Annual Disclosure Statement

- 1. Must be filed for each calendar a business entity received more than \$50,000.00 in contracts with public entities.
- 2. The statement must identify all contributions to the following:
  - a) The candidate committee or joint candidates committee of a candidate for or holder of the office of Governor, State Senate, General Assembly, county executive, freeholder, sheriff, clerk, surrogate, and member of a municipal, school board, and fire district governing body;
  - b) A political party committee;
  - c) A legislative leadership committee;
  - d) A political committee; and
  - e) A continuing political committee
- 3. Must be filed by March 30 of the following year

#### VI. State Board of Professional Engineers and Land Surveyors Regulations

A. In order to use the title “professional engineer” or “engineer” a license must be obtained from the State Board of Professional Engineers and Land Surveyors.

B. “Misconduct in the practice of professional engineering” is prohibited. Misconduct includes:

- 1. Acting for a client or employer in professional matters otherwise than as a faithful agent or trustee.
- 2. Disregarding the safety, health and welfare of the public in the performance of his or her professional duties.

3. Advertising in violation of N.J.A.C. 13:40-3.3. See below.
4. Engaging in activity which involves the professional engineer (“PE”) in a conflict of interest.
5. Affixing a signature and seal to any plans, specifications, plats or reports or surveys which were not prepared by the PE or under the PE’s supervision.
6. Failing to comply with Federal, state or local laws, rules or regulations relating to the practice of the profession.
7. Permitting an unlicensed individual to act on the behalf of the PE as his representative before any public or private body for the purpose of rendering professional engineering services.
8. Failing to determine and document the identity of a client prior to commencing any work.
9. Failing to keep a client reasonably informed about the status of a matter and promptly complying with reasonable requests for information.
10. Failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions.
11. Failing to respond in writing within 30 days to a written communication from the State Board of Professional Engineers and Land Surveyors with respect to any investigative inquiry relating to the possible violation of any statute or regulation administered by the Board, and to make available any relevant records with respect to such an inquiry.
12. Rendering engineering services and/or professional opinions when not qualified by training, education and experience in the specific discipline of professional engineering that is involved.
13. Engaging in any activity which results in suspension, revocation or surrender of a professional license or certification in another jurisdiction.

C. Advertising

1. An advertisement must use a term descriptive of the services offered.
  - a) Examples: professional engineer, professional engineer on staff, professional engineering services.
2. The advertisement should include the name of the professional engineer and license number, and the name of any business and certificate of authorization number.
3. Each professional engineer that is a principal, partner or officer of a professional business entity is responsible for the content and form of the advertisement
4. An advertisement must be retained for three years from the date of last use by each professional engineer who is a principal, partner or officer of the professional business entity.

5. It is professional misconduct to include false or misleading information in an advertisement, including claims of superiority that cannot be substantiated.

D. Obligation to Report

1. A professional engineer that has knowledge or reason to believe that another person or firm may be in violation of or has violated any of the statutes or rules administered by the State Board of Professional Engineers and Land Surveyors, must present the information to the Board in writing and must cooperate in furnishing such information or assistance as may be required.

VII. Licensee Duty to Cooperate (N.J.A.C. 13:45C-1)

A. Applies to engineers licensed by the State Board of Professional Engineers and Land Surveyors

B. Requirements

1. A licensee must cooperate with any investigation into the licensee's conduct, fitness or capacity to engage in a licensed profession or occupation where the investigation is intended to evaluate compliance with applicable statutory or regulatory provisions.
2. Failure to cooperate, absent good cause or a bona fide claim of privilege, may be deemed misconduct subject to disciplinary action. Most claims of privilege are unavailable.
3. The failure to comply with an order served upon the licensee is deemed misconduct.

VIII. Public Pension or Retirement Benefits – Ethics Considerations

A. Public Employees' Retirement System ("PERS") (N.J.S.A. 43:15A-38)

1. If, after ten years of service, a member of PERS is separated from service voluntarily or involuntarily, and has not reached service retirement age, then the member may elect to receive certain benefits UNLESS the member was removed for cause on charges of misconduct or delinquency.

B. Honorable Service (N.J.S.A. 43:1-3; N.J.A.C. 17:1-6.1)

1. The receipt of public pension or retirement benefits is expressly conditioned upon the rendering of honorable service by the public officer or employee.
2. The Board of Trustees of any State or locally-administered public pension or retirement benefit system may order the forfeiture of all or part of a member's service credit or pension or retirement benefit for misconduct occurring during the member's public service which renders such service dishonorable.
3. The Board of Trustees will consider the factors listed in N.J.S.A. 43:1-3 to determine whether misconduct is dishonorable and whether forfeiture

is appropriate. These factors “are not applicable to members of PERS who are subject to the automatic forfeiture provisions of N.J.S.A. 43:15A-38.” Manzella, 2008 WL 1958636, \*3 (citing Borrello, 313 N.J. Super. at 77-78).

4. Consequences of finding of dishonorable service

- a) When the board of trustees rules that a partial forfeiture is warranted, the benefits will be calculated as if the accrual of pension rights terminated as of the date the misconduct first occurred.
- b) However, where the effect of the forfeiture is disproportionately minimal or excessive as compared to the nature and extent of the misconduct and the years of honorable service, then the board of trustees may provide a more equitable relief.

C. Criminal Convictions (N.J.S.A. 43:1-3.1)

1. A person who held or holds public employment in the government of this State or any agency or political subdivision thereof who is convicted of one of a number of specifically identified crimes which crime or offense involves or touches such office, position or employment, shall forfeit all of the pension or retirement benefit earned in the pension fund or retirement benefit system he participated in at the time of the commission of the offense and which covered the employment involved in the offense.

- a) A crime or offense that “involves or touches such office, position or employment” means that the crime or offense was related directly to the person's performance in, or circumstances flowing from, the specific public office or employment held by the person.
- b) The crime does not have to be indictable and a conviction is not necessary.

D. Criminal Charges or dismissal due to administrative charges (N.J.A.C. 17:1-6.2)

1. When a member is subject to criminal charges, such an indictment, information or accusation or dismissed from public employment due to administrative charges, the matter shall be referred to the Board Secretary's office to determine the status of any claim, which may be filed by the member.