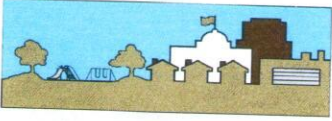


The Municipal Excess Liability Joint Insurance Fund




2013-2014 Public Officials' Risk Management Seminar

MSI

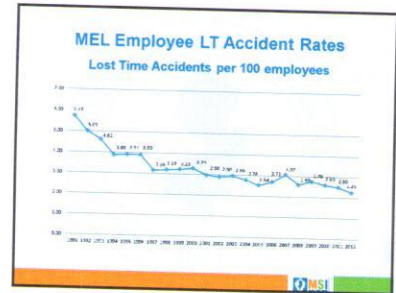
NJ Local Government Claims

\$400 Million
\$50 per capita




Workers' Comp	50%
Liability	40%
Property	10%

MSI



On-Line Training



- New Employee Orientation
- Lifting
- DPW
- Office Safety
- Fire Safety
- Crossing Guards
- Driving
- Blood Borne Pathogen Refresher
- Right to Know Refresher

MSI

Management Training

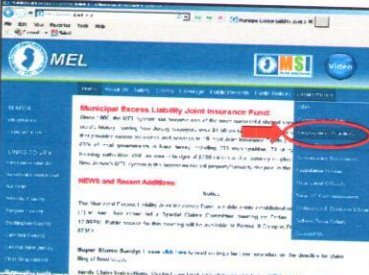
LEARN

Three Day Program Beta Test

MSI




MSI



MSI

Update Employment Practices



- Update Personnel Policies & Procedures and Employee Handbook.
- Distribute Letter to all Employees concerning "Whistle Blower" & Complaint Procedure
- Train managerial/supervisory personnel
- Offer anti-harassment training to all employees

MSI

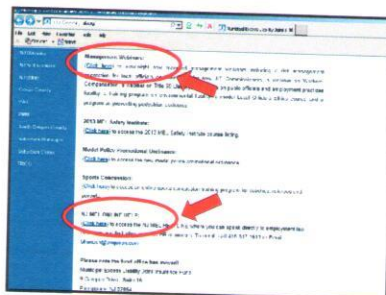

Checklist for Agencies with Currently Approved Risk Control Plans

2013-2014 EMPLOYMENT PRACTICES RISK CONTROL UPDATE CHECKLIST

Name of Agency: _____

1. Review Personnel Policies and Procedures
2. Review Personnel Policies and Procedures
3. Review Personnel Policies and Procedures
4. Review Personnel Policies and Procedures
5. Review Personnel Policies and Procedures
6. Review Personnel Policies and Procedures
7. Review Personnel Policies and Procedures
8. Review Personnel Policies and Procedures
9. Review Personnel Policies and Procedures
10. Review Personnel Policies and Procedures


MSI

eth-ics n.


The discipline dealing with what is good and bad and with moral duty and obligation.

Where Is The Line?



The Local Governments Ethics Law

Consequences of Crossing the Line?




**Fines, punitive damages, jail
Litigation Costs, Verdicts and Fees
Loss of Public Trust and Respect**

Fuel for Ethics Complaints



- Politics
- Personal Animosity - Revenge
- Business Competition
- Leverage to Attack Contested Governmental Actions

How Do I Know What's Ethical?




Smell or gut test: If it feels wrong it probably is

When is acting under the advice of an attorney a valid defense?

- 1) The advice was received prior to the action taken.
- 2) The individual who offered the advice possessed authority or responsibility with regard to ethical issues.
- 3) The individual seeking advice made full disclosure of all pertinent facts and circumstances and
- 4) The individual complied with the advice, including all the restrictions contained in it.

re Howard, 93 N.J.A.R. 24 (Vol. 5A) 1, aff'd as modified, 94 N.J.A.R. 24 (Vol. 5A) 1 (App. Div. 1994).

Legislative Finding



Governments have the duty both to provide their citizens with standards by which they may determine whether public duties are being faithfully performed and to apprise their officers and employees of the behavior which is expected of them while conducting their public duties.

The Local Government Ethics Statute
(N.J.S.A. 40A: 9-22.5 et seq.)

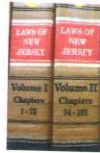
Who must comply?

Local government officers or employees, under the jurisdiction of the Local Finance Board

Basic prohibition:

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;

Basic prohibition:



The basic prohibition pertains to both the public official as well as the official's immediate family

Prohibition against local authorities dealing with former members (one year rule):

No independent local authority shall for one year after a member of the authority leaves office:

1. Award any contract to the former member that is not publicly bid;
2. Allow the former member to represent another party before the authority; or
3. Employ the member, except pursuant to open competitive examination under Civil Service.

This also applies to any business organization that the former authority member holds an interest;

Prohibition against securing advantages:

No local government officer or employee shall use his official position to secure unwarranted privileges or advantages for himself or others;

Local Finance Board Advisory Opinion 92-011

May a Council Member who owns a cleaning service participate in the drafting of bid specifications for cleaning services or submit a bid if he did not participate in the drafting of the bid specs?

No: In both cases, this is a violation of the Local Government Ethics Act as well as the Local Public Contracts Law.



To Avoid Political Black Eyes, Don't:

- Use governmental equipment or vehicles for personal business or political campaigns
- Request governmental employees to work on your property or campaigns
- Use governmental information not commonly known for personal gain
- Meet alone with developers or others seeking advantages from you

Prohibition against direct or indirect conflicts

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;



Direct Conflicts

- Self Interest
- Inconsistent Interests



Indirect Conflicts

- Spouses and Family Members
- Non Economic Personal Advantage
- Future Gain

Barrett et al v. Union Township Committee 230 N.J. Super. 195 (1989) 553 A.2d 62

A Council Member may not vote on zoning amendment that impacts a nursing home where his mother lived even though the Council Member had no direct financial interest in the facility and his mother's bills were paid by Medicaid.

Prohibition against other employment that is in conflict with official positions:

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;

**Local Finance Board Advisory Opinion
92-004 & 93-019**

May a Fire Chief serve on the Board of Fire Commissioners in his own Fire District?

No: Under the doctrine of incompatibility, a person may not serve in a capacity where he must supervise himself.

Prohibition against accepting things of value:

No local government officer, employee, immediate family member, 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 the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties.

Standards for New Jersey State Employees:



Any gift or other item of value including floral and food items by a person or entity with whom a state employee has had contact in his/her official capacity must be declined and the offer reported to the Department's Ethics Liaison Officer.

Exception for political contributions:

This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elected public office if the local governmental officer has no knowledge or reason to believe that the contribution, if accepted, was given with the intent to influence the local government officer in the discharge of his official duties;

Prohibition against use of office for financial gain:

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 for securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated;

Prohibition against representing other parties:

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.

**Local Finance Board Advisory Opinion
91-0135**

Is an engineer or an architect also subject to the prohibition against representing another party before any agency he serves?

Yes: The Local Finance board ruled that the prohibition extends to "any cause, proceeding, application or another matter pending before any agency in the local government the officer or employee serves."

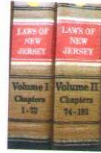
Exception for union activity:

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;

Exception: No conflict if the gain is generally available:

No local government officer shall be deemed in conflict with these provisions if no 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.

Exception: No conflict if the gain is generally available:



This provision recognizes that there is a potential conflict in every action and if taken to an extreme, the Ethics Act would make it impossible for government to conduct business.

Exception for providing constituent service:

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 therefore, and

Exception for representing own interest:

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.

Murtagh v. Park Ridge
Unreported (App. Div. 2006), 2006 WL 1541930

A Zoning Board Member who recused himself because he lived within 200 feet of the subject property, was permitted to appear before the Zoning Board from the audience to object to the variance.



"Those who cannot remember history are condemned to repeat it."

George Santayana
Life of Reason 1905

George Santayana (1863 - 1952)

YOU BE THE JUDGE



Some of the following 20 case studies are violations of the ethics and related laws....some are not.

Case Study # 1

Facts:




A Zoning Board member with many years of experience was confirmed for reappointment by one vote. The tie breaker was his recently elected wife. The couple were married after the Zoning Board member was originally appointed.

Shapiro v. Moritz (368 N.J. Super. 46, App. Div. 2004)


Case Study # 1

☐ Legal

☒ Not Legal




Case Study # 2



Facts:
A County Freeholder applied to become the prosecutor in four towns in the county.


Local Finance Board Advisory Opinion 93-063




Case Study # 2

☒ Legal

☐ Not Legal




Case Study # 3



Facts:
A Housing Authority Commissioner applied to become auditor of a neighboring Housing Authority.


Local Finance Board Advisory Opinion 93-029




Case Study # 3

☒ Legal

☐ Not Legal




Case Study # 4



Facts:
While considering a zoning code amendment, the Council President recused himself but continued to sit at the dais and perform his functions including directing debate, controlling the meeting and calling on interested parties.


(Beacon Hill Farm LLC v Marlboro, unreported 2006, 2006 WL 1161361)




Case Study # 4

☐ Legal


☒ Not Legal



Case Study # 5




Facts:
The Municipal Clerk, who had once lived with the former Mayor, attended closed session meetings of the Council when it discussed potential disciplinary proceedings against the former Mayor's two sons.




Case Study # 5

☐ Legal

☒ Not Legal



Case Study # 6



Facts:
A member of the Zoning Board bid for a contract for computer services for the same municipality. These services did not include equipment used by the Zoning Board or its employees.


Local Finance Board Advisory Opinion 92-009

☒ Legal
☐ Not Legal

Case Study # 6

☒ Legal
☐ Not Legal

Case Study # 7




Facts:
A developer submitted a conforming application to the Planning Board to build a commercial building center incorporating a day care center. The Mayor forced the developer to scale back the application, but still voted against it. Subsequently, it came out that the Mayor had an interest in another day care center nearby.

☒ Legal
☐ Not Legal

Case Study # 7

☐ Legal
☒ Not Legal

Case Study # 8



Facts:
Several Zoning Board members voted to approve a controversial expansion of a college library even though they were alumni.


Hughes v. Monmouth University, Docket No. A-2227-06T2 (App.Div.2007)

☒ Legal
☐ Not Legal

Case Study # 8

☒ Legal
☐ Not Legal

Case Study # 9




Facts:
During a close reelection campaign, the Mayor asked all members of the Planning Board from his party to vote against a controversial application.

☒ Legal
☐ Not Legal

Case Study # 9

☐ Legal
☒ Not Legal

Case Study # 10



Facts:
The Mayor submits an application to the Planning Board to develop his own property and recuses himself from the deliberations.


Wryskowski v. Ritar 132 NJ 509, 1993

☒ Legal
☐ Not Legal


Case Study # 10

☒ Legal


☐ Not Legal



Case Study # 11




Facts:
After granting a controversial site plan approval, the Chairs of the Planning Board and Zoning Board accompanied the applicant to a local restaurant to celebrate.




Case Study # 11

☐ Legal


☒ Not Legal



Case Study # 12




Facts:
The Deputy Mayor voted for a bond ordinance to acquire open space in an area where 90 homeowners lived, including his mother.




Case Study # 12

☒ Legal


☐ Not Legal



Case Study # 13




Facts:
A volunteer firefighter, who was not a senior officer, served on the Board of Fire Commissioners of his own district.
Local Finance Board Advisory Opinion 92-004 & 93-019




Case Study # 13

☒ Legal


☐ Not Legal



Case Study # 14



Facts:
The Council President used one sheet of his official town stationery to endorse a candidate for Congress.



Case Study # 14

☐ Legal

☒ Not Legal

