

ELIMINATING CORRUPTION IN LOCAL GOVERNMENT: THE LOCAL GOVERNMENT ETHICS LAW

I. Introduction

Rapid urbanization, economic changes, and growing demands for public services have increased citizen concern regarding the use of available resources and most importantly, an overall effective administration.¹ The local governing process involves making decisions based upon identifying and analyzing the aggregate needs of the community while still complying with statutory authority.² As the demands on local government officials increase, the difficulty in rendering effective administrative decisions serving the best interests of the public become increasingly unwieldy and onerous. Thus, very often public officials are required to make decisions instantaneously, without considering the numerous dimensions problems may present including what personal interest that public official may have in connection with the decision.³ When political decisions give rise to this type of personal relationship, a conflict of interest manifests. Ultimately, conflicts of interest lead to the proliferation of corruption in local government.

This note examines whether the Local Government Ethics Law⁴ [hereinafter "Ethics Law"] will be effective in eliminating conflicts of interest in local government. Following this introduction, Part II of this note defines various conflicts of interest

¹ GOVERNING NEW JERSEY MUNICIPALITIES (Julius J. Mastro & J. Albert Mastro eds., 5th rev. ed. 1984). An increased concern for government at the local level commenced upon the inception of the New Jersey State Department of Community Affairs in 1966 coupled with the establishment of the County and Municipal Government Study Commission. *Id.* at 1.

² *Id.* Municipalities are state political subdivisions deriving their authority from the state alone. *Id.* at 68. Municipal bodies may act by way of ordinance, motion, or resolution. *Id.*

³ *Id.* at 155. One general rule that has been proffered is that a local government public officer or employee is prohibited from participating in official action that is not otherwise within the purview of his powers, duties, and functions if that officer or employee will procure a financial or personal interest as a result of the action. *Id.* at 149.

⁴ Local Government Ethics Law, ch. 29, 1991 N.J. Laws 2027 [hereinafter Ethics Law].

that may surface in local government. Part III examines the provisions of the Ethics Law and its intended purpose. Part IV explores how the law will be enforced upon local government officials. Finally, Part V discusses the support, as well as, the disfavor the law has received from local government municipalities in New Jersey.

II. *Conflicts of Interest*

A public official has a duty of loyalty, first and foremost, to the public.⁵ A conflict of interest develops when that official has a second interest which appears to be, or actually is, incompatible with the faithful performance of his or her official duty.⁶ The New Jersey Appellate Division in *S & L Assocs. Inc. v. Washington Township*⁷ declared that a public officer has the responsibility to serve the public with undivided loyalty.⁸ Additionally, the court maintained that a public officer's official actions must remain uninfluenced by a private motive or interest.⁹ The Ethics Law codifies the court's holding by establishing a cogent code of ethics.¹⁰

⁵ 35 M.A. PANE, LOCAL GOVERNMENT LAW § 341 (1987). The area of conflicts of interests is of tremendous concern for public officials. *Id.* Officials are usually conscientious in their desire to avoid conflicts or the appearance of such conflicts. *Id.*

⁶ *Id.* § 343(4). The official's second interest is unique from other officials and thus segregates that official from the other office holders. *Id.* Ultimately, the official is divided between satisfying the highest required duty to the public and the personal conflicting interest. *Id.*

⁷ 160 A.2d 635 (N.J. Super. Ct. App. Div. 1960). An unofficial advisory commission was established to develop and execute plans to attract industry to Washington Township. *Id.* at 638. In addition, the commission was responsible for advising the governing body which avenue would be best to pursue to attract industry. *Id.* at 639. A member of the commission, defendant Umstadter, owned land with partner Scott, which was ultimately designated as an industrial zone. *Id.*

Furthermore, the planning board voted to zone two smaller tracts owned by two planning board members as industrial areas. *Id.* The governing body proceeded to adopt an amendment to the ordinance to enlarge the Umstadter property. *Id.*

The court concluded that the Scott-Umstadter tract was not competitive and considered it the only realty suitable for industrial zoning. *Id.* at 647. Conversely, the court held that the two planning board members, Guerin and Hemmings, had an interest in the decision which disqualified them from recommending zoning action regarding this matter. *Id.* Hence, the ordinance and amendment were declared void and Guerin and Hemmings were instructed to abstain from participating in such recommendations. *Id.*

⁸ *Id.* at 644.

⁹ *Id.*

¹⁰ Edward Buzak, *A Guide to the Local Government Ethics Law*, 128 N.J.L.J. 1, 11,

An individual entering into public office promises to perform all duties of that particular office in a faithful, impartial and just manner.¹¹ A public official is charged with adhering to the highest ethical standards to successfully serve the interests of the municipality's citizens.¹² The official assumes a fiduciary duty¹³ to the citizens which require the interests of the public be placed above all other interests and all efforts be made to avoid a conflict of personal interest.¹⁴ Public officials must be highly conscientious to ensure that their actions not only avoid conflicts of interest, but avoid, as well, the appearance of a conflict of interest.¹⁵

May 2, 1991. Avoiding conflicts of interest is much more complex on a municipal level since so many municipal officers have other interests and jobs in addition to public office. Alfred A. Porro, Note, *The Doctrine of Conflicting Interests Applied to Municipal Officials in New Jersey*, 12 RUTGERS L. REV. 582, 597 (1958).

¹¹ GOVERNING NEW JERSEY MUNICIPALITIES, *supra* note 1, at 155, noting that in 1952, the New Jersey Supreme Court professed, "[h]onesty and integrity of the performance of their duties is an absolute charge upon public officials and employees." *Id.*

¹² *Id.* If a personal interest interferes with a public official's ability to satisfactorily serve the public interest, then the official must avoid the potential conflict by withdrawing from the issue. *Id.* at 156.

¹³ *Aldom v. Roseland*, 127 A.2d 190 (N.J. Super. Ct. App. Div. 1958). *Roseland* was reviewing a zoning ordinance where Henry E. Becker of Henry Becker & Sons, Inc. owned a large portion of land. *Id.* at 191-92. The board made recommendations to add other certain land to the zoned area in question, and consequently, the council adopted this amended version of the ordinance. *Id.* The addition to the industrial zone was owned by Becker's business interest with the exception of about ten acres. *Id.* The amendment was attacked as invalid since an employee of Henry Becker & Son, Inc. was a councilman who voted in favor of adopting the ordinance. *Id.* at 192-93.

The court predicated its decisions in part on the theory that a public officer must assume the identical fiduciary relationship with the community's citizens as a trustee would afford his *cestui que* trust. *Id.* at 193. The court determined that as an employee of the corporation which was to benefit from the said ordinance, Councilman Leonard had a personal or private interest in the ordinance amendment, and should have disqualified himself from voting on it. *Id.* at 196. Therefore, the court deemed the ordinance amendment void. *Id.* at 198.

¹⁴ GOVERNING NEW JERSEY MUNICIPALITIES, *supra* note 1, at 155-56. To help a public official define a conflict of interest notwithstanding the ethics law, one may look to statutory law and case law. *Id.* at 156. Statutory law profiles the most obvious types of conflicts of interest that are prohibited. *Id.* Case law examines conflicts of interest after the conflict and perhaps even injury have occurred. *Id.* at 157. However, statutes may prove to be too general while case law may be too specific. PANE, *supra* note 5, § 347.

¹⁵ PANE, *supra* note 5, § 341. There are three possible consequences if a public official engages in a conflict of interest or an appearance of a conflict that have been

There are four general interests that have been recognized as types of conflicts.¹⁶ The direct pecuniary interest or financial interest is the most blatant conflict of interest.¹⁷ The second type of conflict is an indirect pecuniary or financial interest where a financial tie exists between the contemplated matter and the public official.¹⁸ The third possibility of a conflict of interest is a direct personal interest which is an obvious interest that may not produce financial benefits but is of unique and immediate importance to the official.¹⁹ The fourth potential conflict of interest is an indirect personal interest.²⁰ The indirect conflict of interest manifests when an official wishes to advance policies to benefit a particular organization of which he or she is a member.²¹

The direct pecuniary conflict is evident in *Jones v. East Windsor Regional Board of Education*.²² In this case, the court maintained that the wife of a nominee in a school board election should have

imposed prior to the Local Government Ethics Law. *Id.* The first consequence is the imposition of criminal penalties or sanctions, as well as, removal from office. *Id.* The second remedy for a violator might be declaring a municipal agency's act as invalid, as it is tainted by a conflict. *Id.* A final consequence if a conflict is discovered is the political retribution that may accompany such misconduct. *Id.*

¹⁶ *Id.* § 343(1). Clearly, an unlimited number of fact patterns involving conflicts of interest could be hypothesized. *Id.* § 343. However, the most useful approach to delineate four general types of conflicts is to examine common statutory language relied upon in case law. *Id.*

¹⁷ *Id.* § 343(2). An example of a direct pecuniary interest is when a public official or employee votes that the municipality should award a contract to a certain company and that officer possesses a financial interest in the company. *Id.* Obviously, the officer would derive a direct pecuniary gain by a vote to award the contract to that company. *Id.*

¹⁸ *Id.* § 343(2). A typical example of an indirect pecuniary interest is where a company employee would benefit from the passage of a measure such as an ordinance. *Id.*; see also *Griggs v. Princeton*, 162 A.2d 862 (N.J. 1960) (held that two Princeton University employees should not have voted to declare an area as blighted when a University owned real estate holding corporation was the major beneficiary of the vote); *Sokolinski v. Woodbridge*, 469 A.2d 96 (N.J. Super. Ct. App. Div. 1983) (held that school board employees should not have voted on a change in zoning that would have benefitted the school district).

¹⁹ *PANE*, *supra* note 5, § 343(3). It appears as though the area of direct personal interest is expanding. *Id.*

²⁰ *Id.* § 343(4).

²¹ *Id.*

²² 362 A.2d 1228, 1235 (N.J. Super. Ct. Law Div. 1976). In this case, there was a vacant position on the East Windsor Regional Board of Education. *Id.* at 1230. Mrs. Friedman, a board member who had been defeated in the last election, arranged to notify the public of the open seat. *Id.* Subsequently, she held a special meeting at which her husband was nominated and sworn in as the new board member. *Id.* at

abstained from voting for her husband's nomination to fill a vacancy on the school board.²³

In the instance of an indirect pecuniary conflict, the official may not incur a financial loss or benefit as a result of the outcome.²⁴ The purview of indirect pecuniary conflicts of interest includes subtle career and economic motives.²⁵ *Aldom v. Roseland* illustrates an indirect pecuniary conflict of interest.²⁶ The *Aldom* court maintained that since a company employee would have benefitted from the passage of a zoning change, he should not have voted on the ordinance in his official capacity.²⁷ The court insisted that the law would not tolerate a mingling of self interests but rather demands exclusive loyalty.²⁸

The scope of the direct personal interest encompasses cases involving nepotism.²⁹ An example of an indirect personal interest is where a municipal planning board is reviewing the re-zoning of property being sold by a church to a bank, and two of the planning board's members are also members of the church.³⁰ The

1231. The contention was that if Mrs. Friedman voted for her husband it would be a conflict of interest. *Id.*

The court surmised that voting for her husband was an impropriety and she should have taken proper action by abstaining. *Id.* at 1235. The court ordered that Mr. Friedman's seat be vacated, thus rendering his election void. *Id.*

²³ *Id.* at 1235.

²⁴ *Id.*

²⁵ *Id.* In de minimus situations, neither a conflict nor appearance of conflict exists. One example is where an official is employed by New Jersey Bell and votes to have that company provide telephone services. *Id.* In cases where questions pertaining to this category surface, the nature of the relationship as well as the proximity and consequence on the voting official must be considered. *Id.* See also *Van Itallie v. Franklin Lakes*, 146 A.2d 111 (N.J. 1958).

²⁶ 127 A.2d 190 (N.J. Super. Ct. App. Div. 1958); see also *supra* note 18 and accompanying text.

²⁷ *Aldom*, 127 A.2d at 190.

²⁸ *Id.* at 193.

²⁹ *Id.* Earlier cases examined the type of association the relative had to the event and the degree of benefit that was conferred. *Id.*; see *supra* note 19 and accompanying text.

³⁰ *Zell v. Roseland*, 125 A.2d 890 (N.J. Super. Ct. App. Div. 1956). This action involved an appeal concerning an amendment adopted for the original zoning ordinance. *Id.* at 891. The amendment revised the central business district boundaries. *Id.* One of the lots of land to be re-zoned was owned by a church. *Id.* The proceedings leading to the adoption of the ordinance were initiated by the church and the counsel of the bank who had an option to purchase the church's property. *Id.*

The court held that a conflict of interest existed because the planning board members were also members of the church congregation. *Id.* at 892. Accordingly,

Appellate Division in *Zell v. Roseland* held that there was an indirect personal interest since the planning board members' church could derive an indirect personal gain.³¹

Increasingly, there has been a concern regarding the appearance of a conflict of interest.³² While the case law addressing this particular issue is scarce, it is still important for a public official to avoid the appearance of conflict since such an appearance may create a diminution in the public's confidence in the government.³³ Furthermore, an appearance of a conflict may cause substantial political embarrassment to the involved official.³⁴ *In re: Opinion No. 415* articulated a test to assess whether an appearance of conflict existed.³⁵ To the extent an intelligent, impartial and concerned citizen with knowledge of all the situation's facts feels the potential exists for the official to render a non-objective decision, an appearance of conflict is present.³⁶

the ordinance was declared invalid. *Id.* at 894. See *supra* note 19 and accompanying text.

³¹ 125 A.2d at 894.

³² PANE, *supra* note 5, § 344. There has been an increasing concern for a number of years regarding the Ethics Committee's review of appearances of conflict. GOVERNING NEW JERSEY MUNICIPALITIES, *supra* note 1, at 161. This concern has magnified the need to establish a standard pertaining to the appearance of conflicts of interest in order to maintain public confidence. *Id.* The need for this standard reaches beyond the interest of the actual wrongdoing to create an assumption that public officials should avoid the appearance of conflict as much as they avoid the conflict itself. *Id.*

³³ GOVERNING NEW JERSEY MUNICIPALITIES, *supra* note 1. The trend particularly concerning municipal officials and appearance or potential conflicts of interest began in New Jersey with the Open Public Meetings Act, the Local Public Contract Law revisions, the Cable Television Law and other enacted legislation. *Id.*

³⁴ *Id.*

³⁵ 407 A.2d 1197 (N.J. 1979). The New Jersey Association of County Counsel [hereinafter Association] membership includes county counsel as well as assistant county counsel. *Id.* at 1198. The Association asked the court for consideration regarding the propriety of legally representing both a municipality and county by attorneys within that county. *Id.* The organization contended that blanket prohibitions should not be placed on representing both the municipality and the county. *Id.* at 1199.

The court concluded that attorneys who provide services for governmental entities must avoid any situation that even appears to present a conflict of interest. *Id.* at 1200 (citing *State v. Rizzo*, 350 A.2d 225, 226 (N.J. 1975)). The court opined that an attorney representing a county must further the county's public interest, whereas counsel representing a municipality must advance the public interest of the municipality. *Id.* at 1201.

³⁶ *Id.* An attorney is held to a high standard of ethical conduct to ensure public confidence. *Id.* at 1200. According to the ABA CODE OF PROFESSIONAL RESPONSIBIL-

III. The Law And Its Purpose

A. The Code of Ethics

After fighting for the passage of an ethics bill for the past two decades,³⁷ Senator Paul Contillo³⁸ (D - Bergen) was finally successful in convincing the Senate to pass the Local Government Ethics Law.³⁹ Throughout the 1970s and the 1980s, the bill had unanimously passed the Assembly Committee and passed the General Assembly, but it was then stopped either in the Senate Committee or the Senate.⁴⁰ A survey of ethics codes was completed at the county and municipal levels before the bill was

rry, a lawyer representing multiple clients will potentially have differing interests. *Id.* Thus, the attorney must carefully measure the possibility of impaired judgment or divided loyalty. *Id.*

³⁷ Letter from Sen. Paul Contillo (Feb. 12, 1991). The letter was released in defense to allegations made by the East Rutherford Mayor James Plosia. *Id.* at 1. In the letter, the Senator responded to the Mayor's accusation that the ethics bill called for the disclosure of elected and appointed officials' financial worth, by reiterating the bill's requirement of disclosure of financial sources only. *Id.* See *infra* note 147 and accompanying text.

³⁸ Senator Contillo (D - Bergen) had served as the Chairman of the Ethics Board in Bergen County where he also authored the Bergen County Code of Ethics. See Lecture on the Local Government Ethics Law sponsored by the New Jersey League of Municipalities (May 7, 1991)[hereinafter Lecture]. The Senator was not re-elected in 1991.

Approximately 400 municipal officials, including attorneys, attended this lecture where speakers articulated how the Local Government Ethics Law works, what the law means, how it is applied to local government officers and employees, and how it should be implemented in a municipality. Sue Epstein, *Local Officials Gather To 'Bone Up' On Specifics of the Ethics Law*, THE STAR-LEDGER (Newark), May 8, 1991, at 22. The speakers at the lecture were: Sen. Paul Contillo; League of Municipalities Associate Counsel, William J. Kearns, Jr.; and the chairman of the Local Finance Board, Barry Skokowski, Sr. See Lecture, *supra*. The speakers were introduced by Paul Maticera, North Brunswick Mayor and vice president for the League of the Municipalities. *Id.* While serving on the Ethics Board in Bergen County, Sen. Contillo discovered that the majority of the Board's work had been drafting advisory opinions for hard working, honest public officials who wanted to know what they were allowed or not allowed to do. *Id.*

³⁹ Buzak, *supra* note 10, at 11. The adoption of the Ethics Law was nearly unanimous. *Id.* On May 22, 1991, the bill became effective, although financial disclosure forms are not required to be completed until Aug. 20, 1991. *Id.* Subsequently, the financial disclosure forms must be submitted annually on April 30th. *Id.*

⁴⁰ Lecture, *supra* note 38. Senator Contillo claims that the bill was nearly passed in 1979 where it was approved by the Assembly Committee, the General Assembly, and the Senate Committee. *Id.* On the last day of the Senate session, the bill unquestionably would have passed according to the Senator, but it was not presented for a vote. *Id.*

drafted.⁴¹ The result of the study provided that three out of four New Jersey municipalities were found to have no ethics code whatsoever.⁴² Only the municipalities of Vernon Township, Oakland, Hillsborough, Cherry Hill, Washington Township in Gloucester County, and Voorhees had meaningful codes.⁴³ Bergen and Camden counties had the strongest codes of ethics, but they were still far from perfect.⁴⁴

Historically, the Ethics Law is significant for marking the first time every local government in New Jersey will have a code of ethics.⁴⁵ This uniform code of ethics establishes common rules to prevent problems before they arise.⁴⁶ In effect, the legislation is designed to protect the political integrity of government officials and employees.⁴⁷ Some feel that a person working in the public domain should comply with a degree of conduct that is higher than the degree adhered to by the average citizen.⁴⁸ The Ethics Law requires more than 25,000 elected and appointed officials serving county and municipal governments to disclose their financial sources and adhere to a code of ethics.⁴⁹ Financial disclosure forms must be filed by the New Jersey elected and appointed officials in 21 counties and 567 municipalities within the state.⁵⁰

⁴¹ Tom Hester, *Ethics Uproar*, THE STAR-LEDGER (Newark), Aug. 19, 1991, at 9.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Robert Schwaneberg, *Ethics Code for Local Governments Approved and Sent to the Senate*, THE STAR LEDGER (Newark), Dec. 18, 1990, at 32.

⁴⁶ See generally Lecture, *supra* note 38. One municipal attorney recognized that the law's intention is good but posits that the diversity of New Jersey communities will make the law difficult to apply uniformly. Maryann Spoto, *State Municipal Officials Agree New Ethics Code Needs Fine-tuning*, THE STAR-LEDGER (Newark), May 22, 1991, at 29.

⁴⁷ Hester, *supra* note 41, at 9 (statement of Ed McCool). A political actor's integrity is measured by how he or she resolves a conflict, given the pressures of competing obligations. PUBLIC DUTIES: THE MORAL OBLIGATIONS OF THE GOVERNMENT OFFICIALS (Joel L. Fleishman et al. eds., 1981)[hereinafter PUBLIC DUTIES]. The key factor of political integrity is the extent in which political actors will favor their own self-interest to reconcile a conflict. *Id.*

⁴⁸ Hester, *supra* note 41, at 9 (statement of Bill Dressel, the League of Municipalities' Assistant Executive Director).

⁴⁹ *Id.* at 1. Senator Contillo insists that the taxpayer will get more for the dollar with the code of ethics. *Id.* The bill will perpetuate more businesslike operations in local government and help eviscerate the concern for determining who is a political contributor, an employee, a partner of a company, or a client. *Id.*

⁵⁰ *Id.* The code applies to all municipalities in New Jersey in order to establish common rules and guidelines. *Id.* at 9. See Lecture, *supra* note 38.

Over the past ten years, Senator Contillo was faced with enormous opposition to this bill.⁵¹ He was able, however, to couple previous support from the New Jersey Common Cause⁵² with the endorsement he received in 1990 from the League of Municipalities⁵³ and other legislators to successfully pass the bill into law. The law promulgates a minimum standard of ethics in order to eliminate conflicts of interest.⁵⁴

The ethics law affects local government employees and local government officers.⁵⁵ These two categories include elected officials; officers serving on local agencies empowered to approve development applications, grant zoning variances, and enact ordinances; independent municipal county or regional authority members;⁵⁶ and local government employers who are executive confidential⁵⁷ or managerial employers.⁵⁸

The law prescribes the following provisions in order to elim-

⁵¹ Interview with Alan Sklar, Aide to Sen. Paul Contillo (Aug. 23, 1991).

⁵² Hester, *supra* note 41, at 9. The minimum standards for ethics were set forth by the New Jersey Common Cause. Lecture, *supra* note 38. New Jersey Common Cause executed the first and only survey on which municipalities promulgated a code of ethics. *Id.*; see *supra* note 41 and accompanying text.

⁵³ Letter from Sen. Paul Contillo, *supra* note 37, at 2. The League of Municipalities proposed significant amendments and modifications which contributed to the success of the law. Lecture, *supra* note 38 (statement of Paul Matacera).

⁵⁴ Lecture, *supra* note 38 (statement of Sen. Contillo). Conflicts of interest in this issue pertain to public interests which clash with a local government official's or employee's private interests. GOVERNING NEW JERSEY MUNICIPALITIES, *supra* note 1, at 149. While an interest may appear to be in conflict, it may not be of sufficient significance to be dispositive of a disqualifying conflict of interest. *Id.* Some interests are unavoidable and others are minimal. *Id.* When the public interest is placed in a position of competition, the interest may be discerned as disqualifying. *Id.* The ethics law is concerned with the disqualifying type of interest. *Id.*

⁵⁵ Buzak, *supra* note 10, at 1; see Lecture, *supra* note 38.

⁵⁶ Lecture, *supra* note 38 (statement of Barry Skokowski, Sr.). At the lecture, Skokowski also addressed the issue of enforcement. *Id.* He discussed the appeal process to the Local Finance Board as well as the opportunity for a municipality to appoint their own ethics committee. *Id.*

⁵⁷ Buzak, *supra* note 10, at 1. N.J. STAT. ANN. § 34:13A-3(g) (West 1988) sets forth: "'Confidential employees' of a public employer means employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties."

⁵⁸ N.J. STAT. ANN. § 34:13A-3 (West 1988) provides:

"'Managerial executives' of a public employer means persons who formulate management policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices, except that in any school district

inate potential conflicts of interest. A local government official, employee, or immediate family member of either the employee or official is not allowed to have an interest in a business, professional activity or business organization which is a substantial conflict with the proper performance of public duties.⁵⁹ For a period of one year after the termination of an independent local authority's office, that authority may not award any contract that is not offered for public bidding to the former member;⁶⁰ may not allow the former member to represent, negotiate on behalf of, or appear for any party coming before that authority;⁶¹ and may not employ a former member for compensation.⁶²

The Ethic's Law continues to expunge conflicts of interest by providing that a local government officer or employee may not secure unwarranted advantages or privileges for himself or others by using or attempting to use his official position.⁶³ If a local government officer or employee has a direct or indirect financial or personal interest, where one may reasonably expect his independence or objectivity of judgment to be impaired, then he is prohibited from acting in his official capacity.⁶⁴ Employment or service, whether compensated or not, may not be entered into or provided by a local government officer or employee if it is reasonable to expect his independence of judgment in exercising his official duties may be prejudiced.⁶⁵

Furthermore, any gift, loan, favor, political contribution, promise of future employment, service, or other item of value may not be solicited or accepted by a local government employee or official, a business where he has an interest, or a member of his immediate family. This is based on the understanding that

this term shall include only the superintendent or other chief administrator, and the assistant superintendent of the district.

⁵⁹ Ethics Law, *supra* note 4, § 7a.

⁶⁰ *Id.* § 7b(1). This provision applies to a business organization in which the former authority official holds an interest. *Id.*

⁶¹ *Id.* § 7b(2). This provision applies to a business organization where the former authority official holds an interest. *Id.*

⁶² *Id.* § 7b(3). This provision is advanced with exception to open competitive examination pursuant to the New Jersey Statutes Title 11A and relevant rules and regulations. *Id.* This also applies to a business organization where the former authority official holds an interest. *Id.*

⁶³ *Id.* § 7c.

⁶⁴ *Id.* § 7d.

⁶⁵ *Id.* § 7e.

the aforementioned gratuities were offered or given with the intention of directly or indirectly influencing him in performing his official duties.⁶⁶ However, this provision does not apply to contributions solicited or accepted for a candidate's campaign for public office if a local government officer has no reason to believe or does not know that the contribution was given to influence the officer to discharge his official duties.⁶⁷ This provision is analogous to federal laws restricting federal employees and officials from accepting or soliciting items of value.⁶⁸

A local government employee or officer may also not use his office, employment, or any information not generally available to the public which was received in the course of his employment to secure financial gain for himself, a business organization with which he is associated or for an immediate family member.⁶⁹ A local government officer, employee or business organization with an interest is not permitted to represent another person or party beside the local government involved in any proceeding, application, cause or other matter pending before a local government agency where he serves.⁷⁰

Moreover, the law stipulates that a local government officer will not be declared to be in conflict with the provisions if he does not procure material of monetary gain as a member of any profession, business, occupation or group any greater than could be reasonably expected by participating in a resolution, enactment of an ordinance, or any other issue requiring his vote.⁷¹ The law also maintains that a local government officer should not

⁶⁶ *Id.* § 7f.

⁶⁷ *Id.*

⁶⁸ See 5 U.S.C. § 7353 (Supp. 1992). A member of Congress or an employee or officer of the judicial, legislative, or executive branch shall not accept or solicit anything of value from an individual doing business with, seeking official action from, or conducting activities that are regulated by that person's employing entity. *Id.* § 7353(a)(1). Furthermore, no member of the aforementioned shall accept or solicit anything of value from an individual whose interest could be substantially affected by the nonperformance or the performance of the duties of the official. *Id.* § 7353(a)(2).

⁶⁹ Ethics Law, *supra* note 4, § 7g.

⁷⁰ *Id.* § 7h. A local government employee is not prohibited from representing another employee of the local government where the employer is the local government agency and the representation is within the purview of an official labor union or of similar representational responsibilities. *Id.*

⁷¹ *Id.* § 7i.

be estopped from inquiring about information for a constituent so long as a reward, fee, or other object of value has not been given to, promised to, or accepted by the official or by his immediate family member either directly or indirectly.⁷² Finally, a local government officer, an employee, and their immediate family members are free to represent themselves in proceedings or negotiations regarding his or their own interest.⁷³

B. *The Financial Disclosure Requirements*

The most controversial aspect of the law requires local government officers, employees and their immediate family members to file a financial disclosure statement annually. While there has been a great deal of protest over this aspect of the bill, federal government officials are also subject to disclosure requirements.⁷⁴ The law mandates that every source of income exceeding \$2,000 that the local government officer, employee or immediate family member received during the preceding calendar year be disclosed.⁷⁵ The financial disclosure requirements imposed on federal employees are even more stringent than those placed upon local government officials.⁷⁶ Fees and honora-

⁷² *Id.* § 7j.

⁷³ *Id.* § 7k.

⁷⁴ *Id.* § 8. Financial disclosure is required by federal personnel in the following positions: the President, the Vice President, each employee or officer in the executive branch, employees appointed under § 3105 of title 5 of the United States Code, an employee of confidential or policymaking character excepted from the competitive service, certain federal employees in the Postmaster General's Office, the Director of the Office of Government Ethics and designated ethics officials, other employees of the Executive Office of the President, members of Congress, employees and officers of Congress, judicial officers and judicial employees. 5 U.S.C. App. 6 § 101(f) (Supp. 1991).

⁷⁵ See Buzak, *supra* note 10, at 26. A member of the immediate family is defined as a dependent child or spouse living in the same household as the public official. *Id.*

⁷⁶ Ethics Law, *supra* note 4, § 8(1). However, customer receipts or commissions on transactions procured through a business organization as well as individual client fees do not have to be reported separately as sources of income. *Id.* If the source of income is a publicly traded security, that security does not have to be reported unless the local government official or an immediate family member of the official possesses an interest in the business organization. *Id.* Under federal law, 5 U.S.C. App. 6 § 102(a) (Supp. 1991) requires:

Each report filed pursuant to section 101(d) and (e) shall include a full and complete statement with respect to the following: (1)(A) The source, type and amount or value of income (other than income referred

riums with an aggregate amount exceeding \$250 from a single source for speeches, writings, or personal appearances acquired during the preceding calendar year must be disclosed.⁷⁷ Each source of prepaid expenses, gifts, and reimbursements with a total value exceeding \$400 per source, excluding relatives, obtained during the preceding calendar year must be disclosed.⁷⁸ If the local government official, employee, or any of their immediate family members had an interest in a business organization

to in subparagraph (B) from any source (other than from current employment by the United States Government), and the source, date, and amount of honoraria from any source, received during the preceding calendar year, aggregating \$200 or more in value and, effective January 1, 1991, the source, date, and amount of payments made to charitable organizations in lieu of honoraria, and the reporting individual shall simultaneously file with the applicable supervising ethics office, on a confidential basis, a corresponding list of recipients of all such payments, together with the dates and amounts of such payments. (1)(B) The source and type of income which consists of dividends, rents, interest, and capital gains, received during the preceding calendar year which exceeds \$200 in amount or value, and an indication of which of the following categories the amount or value of such item of income is within: (i) not more than \$1,000, (ii) greater than \$1,000 but not more than \$2,500, (iii) greater than \$2,500 but not more than \$5,000, (iv) greater than \$5,000 but not more than \$15,000, (v) greater than \$15,000 but not more than \$50,000, (vi) greater than \$50,000 but not more than \$100,000, (vii) greater than \$100,000 but not more than \$1,000,000, or (viii) greater than \$1,000,000.

⁷⁷ Ethics Law, *supra* note 4, § 8(2).

⁷⁸ *Id.* § 8(3). The federal requirements under 5 U.S.C. App. 6 § 102 (Supp. 1991) include:

(2)(A) The identity of the source and a brief description (including a travel itinerary, dates, and nature of expenses provided) of any gifts of transportation, lodging, food, or entertainment aggregating \$250 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of any individual need not be reported, and any gift with a fair market value of \$75 or less need not be aggregated for purposes of this subparagraph. (B) The identity of the source, a brief description, and the value of all gifts other than transportation, lodging, food, or entertainment aggregating \$100 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any gift with a fair market value of \$75 or less need not be aggregated for purposes of this subparagraph. (C) The identity of the source and a brief description (including a travel itinerary, dates, and nature of expenses provided) of reimbursements received from any source aggregating \$250 or more in value and received during the preceding calendar year.

during the preceding calendar year, the name and address of that business organization must be disclosed.⁷⁹ A brief description and address of real property in the state that the officer, employee, or their immediate family member held an interest during the preceding calendar year also must be disclosed which is a less restrictive provision than promulgated in the federal law.⁸⁰

IV. *Enforcement of the Law*

Pursuant to the Ethics Law, the initial financial disclosure statement must be filed by a public official within ninety days after the effective date of the law.⁸¹ Statements must subsequently be filed on or prior to April 30th of each year.⁸² The Local Finance Board⁸³ in the Division of Local Government Services of the Department of Community Affairs is authorized to govern the conduct of local government employees or officials.⁸⁴ However, the Ethics Law allows a county or municipal ethics board to articulate a code of ethics in accordance with the Act's provisions.⁸⁵

⁷⁹ Ethics Law, *supra* note 4, § 8(4). The category of value and identity of property interest in a business or for investment having a fair market value in excess of \$1,000 must be disclosed. 5 U.S.C. App. 6 § 102(A)(3) (Supp. 1991).

⁸⁰ Ethics Law, *supra* note 4, § 8(5). Federal law, under 5 U.S.C. App. 6 § 102(5) (Supp. 1991) provides:

Except as provided in this paragraph, a brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year which exceeds \$1000 (A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse; or (B) in stocks, bonds, commodities futures, and other forms of securities. Reporting is not required under this paragraph of any transaction solely by and between the reporting individual, his spouse, or dependent children.

⁸¹ Ethics Law, *supra* note 4, § 8b.

⁸² *Id.*

⁸³ The Local Finance Board is comprised of eight members. Lecture, *supra* note 38 (statement of Barry Skokowski, Sr.). Seven of the members are appointed by the Governor and then confirmed by the Senate for five overlapping terms. *Id.* The director of the board, who is presently Barry Skokowski, Sr., is the chairman by statute. *Id.* The Local Finance Board is a non-partisan body and currently each member of the board has experience in local government. *Id.*

⁸⁴ Ethics Law, *supra* note 4, § 6. Since 1918, the widely respected Local Finance Board has regulated local government finances. David Schwab, *Some Volunteers Quit Boards As They Fret Over Ethics Law*, THE STAR-LEDGER (Newark), Apr. 14, 1991, at 24.

⁸⁵ Lecture, *supra* note 38. Recommendations from both Barry Skokowski, Sr. and William J. Kearns, Jr. advocating that each county and municipality establish its own board of ethics were articulated. *Id.* Kearns stated that, "[w]hether you ap-

If a municipality chooses to do so, the local or county board may create a code of ethics that is identical to, or more stringent than, the code of ethics promulgated in the statute, within ninety days after the bill is passed.⁸⁶ In such an instance, a local government agency will fall under the Board's jurisdiction.⁸⁷ The Local Finance Board will decree the financial disclosure statement to be filed by the employees or officers.⁸⁸ The Board must deliver the disclosure forms to the municipalities and county clerks if no local ethics board exists.⁸⁹ If a county or municipality has established an ethics board, the Local Finance Board is required to forward copies of the disclosure forms to the boards.⁹⁰ An officer or employee must file the statement with the municipal clerk and a county officer must file it with the county clerk.⁹¹ A copy of the statement is then filed with the board.⁹² All of the financial disclosure statements filed remain on public record.⁹³

point an ethics board is a policy question, but, personally, I think it's a mistake to abrogate local responsibility to the state." *Id.* See Epstein, *supra* note 38, at 22.

⁸⁶ Buzak, *supra* note 10, at 27. The Local Government Ethics Law has prompted the state to preempt all of the existing local ordinances. Lecture, *supra* note 38 (statement of William Kearns, Jr.). See Epstein, *supra* note 38, at 22. (Epstein's article summarizes the highlights of the lecture). A local ordinance that is more stringent than the Local Government Ethics Law must be submitted to the Local Finance Board to receive approval. *Id.*; see also Lecture, *supra*.

⁸⁷ Ethics Law, *supra* note 4, § 6. If a local board of ethics is instituted, it must contain six members. Epstein, *supra* note 38, at 22. Two of the six members must be from the public and not more than three members may be from each political party. *Id.*

⁸⁸ Ethics Law, *supra* note 4, § 8b. A question and answer newsletter will accompany the forms. Lecture, *supra* note 38 (statement of Barry Skokowski, Sr.).

⁸⁹ Ethics Law, *supra* note 4, § 8b.

⁹⁰ *Id.* In Essex County, Freeholder Monroe J. Lustbader requested that a county ethics board be created pursuant to the Local Government Ethics Law. *Lustbader Urges Essex To Form Ethics Board*, THE STAR-LEDGER (Newark), June 30, 1991, at 32. Lustbader advocated establishing a county board because "the vitality and stability of representative democracy depends upon the public confidence in the integrity of its elected and appointed representatives." *Id.*

⁹¹ Ethics Law, *supra* note 4, § 8b.

⁹² *Id.*

⁹³ *Id.* § 8c. Federal statute 5 U.S.C. App. 6 § 105 (Supp. 1991) provides in relevant part:

- (a) Each agency, each supervising ethics office in the executive or judicial branch, the Clerk of the House of Representatives, and the Secretary of the Senate shall make available to the public, in accordance with subsection (b), each report filed under this title with such agency or office or with the Clerk or the Secretary of the Senate.

Pursuant to 5 U.S.C. App. 6 § 105(1), exceptions to the public availability of the

In order to implement the provisions of the Ethics Law, the Local Finance Board is empowered with specific administrative rights.⁹⁴ The Board may initiate, hear, receive, and review complaints prior to holding a hearing to determine violations of the law.⁹⁵ The Board may also issue subpoenas to produce documents and require the attendance of witnesses concerning the investigation of a complaint or hearing.⁹⁶ A county or municipal ethics board's decision may be heard and decided on appeal by the Board.⁹⁷ Additionally, the Board may forward any information regarding violations of the law that may be the matter of a criminal prosecution or warrant the commencement of legal proceedings to the prosecutor of the county or the Attorney General.⁹⁸ In order to determine whether particular facts and circumstances would be deemed violations of the Act, the Board may promulgate advisory opinions,⁹⁹ enforce the law's provisions, and impose penalties for violations.¹⁰⁰ Finally, the Board is empowered to take other necessary measures to implement the

disclosure statements include instances when an individual is with the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, or if the individual is engaged in United States intelligence activities and the President deems that revealing the individual's identity or public disclosure information would be a danger to national interest. An additional exception where the report may not be available to the public is if the court, under the United States Code, chapter 40 of title 28, has not disclosed the identity of an independent counsel or the person appointed by the independent counsel. *Id.*

⁹⁴ Buzak, *supra* note 10, at 26. If a municipality began to prosecute an ethics code violator under their old code prior to the Local Government Ethics Law taking effect, the action may continue since the new ethics law is not retroactive. Epstein, *supra* note 38, at 22.

⁹⁵ Ethics Law, *supra* note 4, § 9a.

⁹⁶ *Id.* § 9b.

⁹⁷ *Id.* § 9c. If a county ethics board is created, it would have the power to hold hearings for violations of the local code of ethics or the disclosure requirements, initiate and review complaints, and issue subpoenas to produce documents and force witnesses to assist in a proceeding. *Lustbader Urges Essex To Form Ethics Board*, *supra* note 90, at 32. Additionally, the county ethics board would be empowered to render advisory opinions to employees or officers in local government and enforce the county administrative code's provisions. *Id.*

⁹⁸ Ethics Law, *supra* note 4, § 9d.

⁹⁹ *Id.* § 9e.

¹⁰⁰ *Id.* § 9f. Under § 12, an appointed or elected local government employee or officer found to have violated any provision of the Act by the Local Finance Board or a municipal or county ethics board would be fined not more than \$500 and not less than \$100. *Id.* § 12. Pursuant to the penalty enforcement law, N.J. STAT. ANN. §§ 2A:58-1 - 2A:58-8 (West 1991), a summary proceeding may be used to collect the penalty. *Id.*

Act's purpose, as well as to adopt rules and regulations in accordance with the Administrative Procedure Act.¹⁰¹ A finding that an appointed local government employee or government official violated the Act, according to the Local Finance Board, is sufficient cause for his suspension, demotion, removal, or other disciplinary action.¹⁰²

V. Reactions To The Ethics Law

The provisions of the Ethics Law caused a tremendous uproar in municipal government.¹⁰³ Some local officials are indignant, claiming the law questions their integrity.¹⁰⁴ Others are incensed by what they view as an invasion of their privacy and the state government's intrusion into local rule.¹⁰⁵ Officials have alleged that the Ethics Law will force decent, honest volunteers out of government.¹⁰⁶ Furthermore, the disclosure statements may serve as a vengeful tool in an election.¹⁰⁷ Claims have even been made that the law violates the Constitution.¹⁰⁸ Many feel the Ethics Law will not serve its intended purpose to prevent corruption in local government.¹⁰⁹

Disfavor and belligerence toward the provisions of the Ethics Law are clearly evident in the number of resignations of local

¹⁰¹ *Id.* § 9e. Administrative Procedure Act, P.L. 1968, c. 410 (codified at N.J. STAT. ANN. §§ 52:14B-1 - 52:14B-21 (West 1986)).

¹⁰² *Id.* § 13. The procedure required to administer the proper punishment is governed by Title 11A of the New Jersey Statutes along with the rules stipulated in the Act. *Id.*

¹⁰³ The myriad of complaints that Senator Contillo has received pertain to the financial disclosure section of the bill. Lecture, *supra* note 38. There have been no demands to abrogate the code of ethics portion. *Id.* The Senator claims that the reasons for the discontent with the financial disclosure portion of the law are attributable to the fact it is the most abrasive and misunderstood section. *Id.*

¹⁰⁴ Hester, *supra* note 41, at 1.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* A planning board member in Clinton, N.J. conceded that improprieties exist in larger cities, but she is doubtful that they occur in a rural community where people devote a great deal of time. Schwab, *supra* note 84, at 24. Therefore, she perceived the bill as a "kick in the teeth." *Id.*

¹⁰⁷ Hester, *supra* note 41, at 1.

¹⁰⁸ Lecture, *supra* note 38.

¹⁰⁹ *Id.* Legal and organizational strategies are instrumental and significant in fighting corruption. PUBLIC DUTIES, *supra* note 47, at 176. However, the focus upon character is equally necessary. *Id.* The virtue of the individual in office is helpful and sometimes even crucial to maintaining and preserving a legitimate and responsive government. *Id.*

government officials. This is primarily prevalent among appointed members of public boards volunteering their time.¹¹⁰ One in five officials in the local governments of Wantage, Blirstown, Phillipsburg, Knowlton, Clinton Township, Frankfort, Hainesport, Hampton Borough, Holmdel, Readington, Hacketts-town, and Atlantic Highlands have resigned.¹¹¹ Five members of the High Bridge Board of Adjustment chose to resign instead of revealing financial information they assert should not be public knowledge.¹¹²

In response to such resignations and in support of the law, a member of the State Assembly professed that he does not want anyone who refuses to serve because of an ethics code to serve as a local government official or employee.¹¹³ While many resignations have been tendered because of refusal to comply with the Ethics Law, a number of resignations have been proffered to avoid violating the law.¹¹⁴ For example, three of four construction board of appeals members in Westfield resigned since their businesses or professional activities may have been in conflict with properly discharging their duties in the interest of the public.¹¹⁵ Many officials are erroneously resigning since the interpretation of the law is still unclear.¹¹⁶ Some officials may have

¹¹⁰ See Hester, *supra* note 41, at 9.

¹¹¹ *Id.* Those who resigned served on planning, health, and zoning boards. *Id.*

¹¹² *Id.* Anybody who reviews a local government official's financial disclosure form in Allamuchy and Independence must sign a form identifying himself or herself. *Id.*

¹¹³ Schwaneberg, *supra* note 45, at 53. Groups representing individuals who serve on local government boards received only a few complaints regarding the new law in April. Schwab, *supra* note 84, at 24. However, they expect the number of complaints to increase after officials are educated about the law, review the forms, and actually complete the forms. *Id.* The President of the New Jersey Federation of Planning Officials, Joseph Doyle, predicted that there would be some surprises for those who examine the bill in May. *Id.* Doyle's association represents approximately 7000 local zoning and planning board members. *Id.*

¹¹⁴ Schwab, *supra* note 84, at 1. As an architect, the bill would preclude her from serving on the board as well as providing architecture services to the limited number of clientele she had in the town. *Id.* An architect who owned her own firm in West Orange resigned from the planning board in Livingston. *Id.* She stated her reason was that she could not afford to turn down work which she might have had to do in order to comply with the law. *Id.* at 24.

¹¹⁵ Spoto, *supra* note 46, at 29. An architect, an engineer, and a fire prevention specialist resigned in order to avoid injuring their livelihood. *Id.* A planning board chairwoman in Millburn resigned as a result of the law. *Id.*

¹¹⁶ *Id.*

prematurely resigned by incorrectly concluding that a position they hold on a board creates a conflict, when in fact it does not. Other officials who have not yet analyzed the bill are not aware that only financial sources are required to be disclosed. In order to remedy any future errors, the Department of Community Affairs is preparing a layman's guide for the ethics law.¹¹⁷

Questions concerning enforcement and funding have also been raised.¹¹⁸ The Ethics Law has been attacked for lacking an adequate appeals process.¹¹⁹ The process does not provide stipulations for frivolous suits and appeals filed.¹²⁰ Additionally, the law does not indicate who is responsible for the payment of legal fees incurred for representation on appeal or whether a person who is vindicated of a charge is entitled to reimbursement.¹²¹

Senator Contillo stated that he was unaware of any resignations by local government officials or of any problems they may have had with the Ethics Law.¹²² He responded to the increasing number of resignations by suggesting that professionals prohibited by the law from serving on a planning or zoning board could serve on another volunteer board.¹²³ The problem with resignations by such professionals is that the board will lack members who are experts in that specific area.¹²⁴ It is often necessary for a

¹¹⁷ *Id.* According to the Department, an example of an area requiring clarification is whether an architect serving on a local board would be allowed to perform a job in town or submit plans requiring the approval from the local construction officers. *Id.*

¹¹⁸ See generally Spoto, *supra* note 46, at 29. Originally, the bill provided for a Local Government Ethics Commission. S.2027, 204th Leg., 2nd Sess. (1991). However, the Assembly State Government Committee eliminated references to the Commission and assigned the responsibility to the Local Finance Board. *Id.* In addition, the amendment deleted an appropriation of \$90,000 that would have funded the Commission. *Id.*

¹¹⁹ Spoto, *supra* note 46, at 29. Michael A. Pane, Associate Counsel for the League of Municipalities, posited this criticism. *Id.*

¹²⁰ *Id.*

¹²¹ *Id.* The question of whether or not the state or the community pays for the legal fees is still pending. *Id.*

¹²² *Id.* Senator Contillo has made it clear that he would contemplate revising the law if necessary. *Id.* He has conceded that many points need to be clarified. *Id.* Furthermore, many pending issues regarding the law will be determined by the New Jersey Department of Community Affairs. *Id.*

¹²³ *Id.*

¹²⁴ *Id.* Public participation is vital for competent board membership. Lecture, *supra* note 38 (statement of William Kearns, Jr.). The law does not state that there cannot be people serving on these boards who do not know how local government

zoning or planning board to have engineers, architects, or construction experts as members. Since many officials are resigning in outrage over the financial source disclosures, some may find validity in the argument that the law forces good, honest people out of government.

The Ethics Law has been attacked as a gross violation of the Constitution, specifically as a violation to the right to privacy.¹²⁵ This argument is based on the notion that officials do not want to reveal where their sources of income are derived. Others have gone as far to say the bill is anti-democratic.¹²⁶ Those who make this allegation have protested the bill by refusing to complete the disclosure forms.¹²⁷ Senator Contillo refuted these allegations by emphatically contending that it is in fact a constitutional act.¹²⁸ The Senator responded to those who alleged the disclosure forms reflect vengeful motives to those running in elections¹²⁹ by stating the form has no value if it is not made available to an opponent or to the press.¹³⁰

Senator Contillo's purpose in passing the Ethics Law was to provide a minimum boiler plate standard of ethics in municipalities.¹³¹ The law allows the citizens in the municipality to better

operates. *Id.* When a local board is established, the members are not expected to act as though they are in a vacuum. *Id.*

¹²⁵ Hester, *supra* note 41, at 1.

¹²⁶ *Letters To The Editor*, HERALD NEWS, May 7, 1991, at 22. Local government is a school of democracy embedded in American tradition. JOSEPH F. ZIMMERMAN, STATE AND LOCAL GOVERNMENT (3rd ed. 1978). A local government exercises public responsibility and an opportunity for citizens in a municipality to provide for their own needs in the manner that they choose. *Id.* at 157. The Local Government Ethics Law will enhance the features of a democratic local government because public responsibility is stressed as well as expected. Additionally, the law eliminates conflicts of interest, allowing citizens the opportunity to fully provide for their own best interests. *Id.*

¹²⁷ Hester, *supra* note 41, at 9.

¹²⁸ Lecture, *supra* note 38.

¹²⁹ Hester, *supra* note 41, at 1.

¹³⁰ Lecture, *supra* note 38 (statement of William Kearns, Jr.). At the lecture, Kearns posited that a political official should look at his or her actions as if they were his or her opponent. *Id.* If their actions would supply their opponent with a weapon over them, the official should reconsider the action and subsequently disqualify him or herself. *Id.*

¹³¹ *Id.* (statement of Sen. Contillo). Past authorities have postulated that financial disclosure and conflict of interest provisions were necessary. COUNCIL OF STATE GOVERNMENTS, ETHICS, STATE CONFLICT OF INTEREST/FINANCIAL DISCLOSURE LEGISLATION 1972-75 (1975)[hereinafter ETHICS]. However, it has been stipulated that

identify with those who have been elected or appointed to serve them.¹³² The Ethics Law rightfully forces public officials to act with integrity.¹³³ The Ethics Law is helpful to public officials since it delineates what they are permitted and not permitted to do.¹³⁴ Additionally, the Ethics Law will inform the public of what they can expect from public officials whose job it is to serve the citizens in their respective municipalities.¹³⁵ The disclosure portion of the Ethics Law reveals any conflicts and examines the official's ability to perform public duties.¹³⁶ The public will be aware

if the provisions are too broad, the problem of an invasion of privacy may occur. *Id.* at 2. Conversely, if the provisions are too specific, unethical conduct not identified in the enacted legislation may be absolved. *Id.* Therefore, the goal is to find the medium between specificity and breadth. *Id.* Hence, the Local Government Ethics Law appears to have achieved this goal.

¹³² Many citizens in New Jersey have a greater sense of identification with neighborhoods and communities than with the state as an entity. *THE POLITICAL STATE OF NEW JERSEY* (G. Pomper ed., 1986). Since communities are reluctant to yield their autonomy to the centralized government of the state, local governments have become accustomed to manage their own affairs. *Id.* at 9. In light of the emphasis on local government autonomy, the bill will enhance this notion by allowing local citizens to monitor how public officials are acting within their own municipality. *Id.*

¹³³ "Integrity" is defined as a rigid adherence to a code of behavior; probity. *THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE* (1973). Personal honesty plays an important role in combating corruption and preserving the integrity of the government. *PUBLIC DUTIES*, *supra* note 47, at 177. There is a two prong test for determining the office holder's integrity. *Id.* at 64. First, the public official should ask where his or her own direct private interest lies. *Id.* at 63. Secondly, the public official should ask where the public's interest lies. *Id.* The public officer's accurate perception of a situation will largely depend on the officer's personal honesty. *Id.*

¹³⁴ See Lecture, *supra* note 38 (statement of Sen. Contillo). When ethical behavior is left under the discretion of the public official, the public can only hope that individual will formulate the fundamental assumptions concerning the level of responsibility and rationality to be expected. *PUBLIC DUTIES*, *supra* note 47, at 113. Ethical behavior of public officials is of monumental importance to municipal citizens. The Local Government Ethics Law enumerates what is acceptable and deplorable behavior. Hence, public officials need not make speculative assumptions that may be incorrect.

¹³⁵ *PUBLIC DUTIES*, *supra* note 47, at 113. Only an informed, concerned, and interested electorate will elect ethical and competent public officials. *ETHICS*, *supra* note 131, at 1. A concerned electorate is necessary since a heavy reliance on our system of government is placed upon the citizens involvement with various boards and commissions. *Id.* at 1. Hence, by informing citizens of what they may expect from public officials, their concern, interest, and knowledge has increased. Consequently, this will heighten the scrutiny public officials use to examine the actions of those serving them. In turn, this will compel public officials to avoid conflicts of interest and adhere to an ethical standard of behavior.

¹³⁶ *ETHICS*, *supra* note 131. The enactment and strengthening of financial disclo-

of for whom the official works and any connections, whether permissible or not under the Ethics Law, that exist.¹³⁷

One common problem in local government that Senator Contillo constructed the Ethics Law to focus closely upon is nepotism.¹³⁸ The Ethics Law was drafted to combat nepotism in local government by requiring the disclosure of the official's or employee's spouse and all the adult children who live at home.¹³⁹

The Ethics Law has also been criticized for not covering school boards¹⁴⁰ or school teachers.¹⁴¹ Senator Contillo intended to introduce a bill covering school boards if he had been reelected.¹⁴² Governor Florio asserted that he would sign such a provision and implement it.¹⁴³ The Senator stipulated that school teachers should be required to comply with the Ethics Law but should not be forced to file the financial disclosure forms.¹⁴⁴ He supported the inclusion of school board officials in the original bill before it was actually passed.¹⁴⁵ However, the opposition the Senator confronted for proposing a law requiring financial source disclosure for only county and municipal officials forced him to eliminate school boards from the law at that time.¹⁴⁶

While it was difficult for Senator Contillo to acquire the support necessary to finally pass the bill, he faced unfounded, misguided accusations following its incorporation into law. The

sure and conflict of interest legislation serves as a means to combat increasing public skepticism. *Id.*

¹³⁷ Lecture, *supra* note 38 (statement of Sen. Contillo). The Senator conceded that there are not many in government who actually serve themselves but there are enough present to injure the rest of the government. *Id.*

¹³⁸ *Id.* Senator Contillo emphasizes that the problem of nepotism is especially apparent with school boards and school systems. *Id.*

¹³⁹ *Id.*

¹⁴⁰ Epstein, *supra* note 38, at 22. See also Lecture, *supra* note 38.

¹⁴¹ Lecture, *supra* note 38 (statement of Sen. Contillo).

¹⁴² Epstein, *supra* note 38, at 22.

¹⁴³ Letter from the Office of the Governor (Feb. 20, 1991) (news release addressing the signing of the Local Government Ethics Bill).

¹⁴⁴ Lecture, *supra* note 38 (statement of Sen. Contillo).

¹⁴⁵ *Id.* Some legislators criticized the bill for not being strict enough since it did not include school boards. *Id.* Their disapproval was more of an excuse to avoid passing the bill than a legitimate concern. *Id.*

¹⁴⁶ Epstein, *supra* note 38, at 22. Senator Contillo stated, "[w]e have a bill pending on school boards which I fully support. I personally think school teachers should also come under an ethics code. As long as I'm in public office, I'll be pressing for that." *Id.*

Ethics Law was publicly denounced by some officials who declared that it was no one's business how much local government officials or employees earn.¹⁴⁷ The Senator responded to these attenuated accusations by reiterating the requirements of the bill, which do not include amounts of money received.¹⁴⁸ These comments do not pass muster since the bill requires only the disclosure of sources of income and not how much the officials earn.¹⁴⁹

There are still questions pending as to how the Ethics Law will be enforced. The State Department of Community Affairs concedes that the number of disclosure forms initially submitted may overwhelm the board.¹⁵⁰ However, as it winnows down the initial filings, subsequent reviews will be easier to conduct and the Board will eventually enforce the law against any violators.¹⁵¹ Admittedly, at the outset, the system will be slow since each form must be checked individually.¹⁵² The prediction that the enforcement of the Ethics Law will ultimately be successful is also attributable to interested citizens insisting on an official's compliance.¹⁵³

VI. Conclusion

Historically, citizens have been reluctant to place their faith in the leaders of the nation,¹⁵⁴ let alone local municipal officials and employees. Citizens have been forced to rely upon substantive and procedural rules to limit the discretion of an official in order to ensure legitimate, sound government.¹⁵⁵ However, most

¹⁴⁷ Hester, *supra* note 41, at 1.

¹⁴⁸ Lecture, *supra* note 38 (statement of Sen. Contillo). Senator Contillo explicitly enunciated that he does not want to require dollar amounts to be reported. *Id.* The reason for this is that some people make modest amounts of money and may feel uncomfortable about publicly reporting their salaries. *Id.* For those who procure very large salaries, the Senator does not ignore the possibility of kidnapping or other pressures from family. *Id.*

¹⁴⁹ Letter from Sen. Contillo, *supra* note 37, at 1. Senator Contillo only wants the public to be aware of for whom public officials work and what are their connections. Lecture, *supra* note 38 (statement of Sen. Contillo).

¹⁵⁰ Hester, *supra* note 41, at 9 (statement of Jay Johnston, a spokesman for the State Department of Community).

¹⁵¹ *Id.* This statement is Jay Johnston's prediction.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ PUBLIC DUTIES, *supra* note 47, at 3.

¹⁵⁵ *Id.* at 3.

citizens often raise the question of how local government officials and employees should be conducting themselves. Citizens expect those who represent them to strictly adhere to a higher standard of ethical conduct amenable to societal mores. Citizens want and demand that officials and employees satisfy their decision making obligations in good faith.¹⁵⁶ Obviously, public interests are not adequately represented by officials who act for personal reasons or pecuniary gain.¹⁵⁷

Ideally, the actions of officials in local governments should be beyond reproach since local government has an immediate and direct interaction with the public.¹⁵⁸ Rigorous requirements are placed on federal personnel when disclosing financial information and these same requirements should be imposed upon officials on the local level of government. Local government is potentially an avenue of even greater importance than the state or federal government for the citizens in a municipality because it is the most decentralized area of government. In light of a local government's decentralized nature, citizens are afforded an opportunity to voice their concerns regarding policies and decisions that will directly effect them. The Ethics Law is yet one more tool the public may use to both identify deplorable behavior that is repugnant to the provisions in the act and to publicly reprimand violators.

The Local Government Ethics Law is an effective means to identify conflicts of interest and combat them before a citizen is injured by the improper acts of a local government official or employee. Claims that the bill is unconstitutional, anti-democratic, and an invasion of privacy are unfounded, attenuated attacks. Individuals entertaining such claims should capitulate in order to accelerate the productive effect that the law will have for the public. The bill aptly requires the minimum information necessary, which is the disclosure of sources of income, to avoid conflicts of

¹⁵⁶ *Id.* at 3. Our country has not been successful in forming a system of government to serve the public independent of its leaders' moral qualities. *Id.* at 5. Therefore, questions pertaining to the virtues, obligations, and duties of public officials are urgent. *Id.* Officials have been expected to answer such questions by being forced to be accountable to electoral tests, to the powers among the separate institutions, and to the judiciary under strict constitutional limitations. *Id.* at 3.

¹⁵⁷ See PANE, *supra* note 5, § 343.

¹⁵⁸ Schwaneberg, *supra* note 45, at 53.

interest.¹⁵⁹

In response to the claims of an official's right to privacy, an argument favoring the public's right to know must be augmented. If the public is expected to place their entire trust and confidence in a few chosen elected and appointed officials, they have a right to know if the possibility exists where the public may be injured by a conflict of interest. Furthermore, the Ethics Law places a prohibition on conflicts of interest between officials or employees and citizens to avoid deference to the already overburdened court system. The law affords citizens the protection that they deserve from such conflicts.

Concededly, the law has not yet proven to be the perfect answer to the problem of conflicts of interest. However, no law can guarantee the ethical behavior of local government officials and employees.¹⁶⁰ Conversely, the law can establish a standard that will act as a catalyst to help restore the public's trust in local government.¹⁶¹ The number of financial disclosure forms filed will be copious, since the Local Finance Board will be receiving approximately 25,000 to 30,000.¹⁶² To the extent these forms must be self-checked,¹⁶³ the process will be slow and there is a question of how complete and diligent the examination of each form will be. However, enacting this bill into law and subsequently remaining stagnant regarding enforcement, would be an anomaly with the law's primary goal. Enforcement of the law in accordance with the sanctions imposed for violators pursuant to the law is vital for its effectiveness.

While the law may not be one hundred percent effective,¹⁶⁴ it is constructed so the conflicts of interests mitigated will unquestionably be numerous. This is especially true because prior

¹⁵⁹ See generally Lecture, *supra* note 38.

¹⁶⁰ Letter from the Office of the Governor, *supra* note 143, at 1.

¹⁶¹ Hester, *supra* note 41, at 1. Supporters of disclosure requirements have argued that they would generate an increase in public confidence in public officials, decrease the possibility that conflicts of interest would surface, and offer the public a better gauge to measure public officials. Thomas J. Satery, *The Ethics in Government Act of 1978 and Subsequent Reforms: The Effect of Political and Practical Influences on the Creation of Public Policy*, 13 SETON HALL LEGIS. J. 243, 246 (1990).

¹⁶² Hester, *supra* note 41, at 1.

¹⁶³ *Id.*

¹⁶⁴ See Schwaneberg, *supra* note 45, at 32. Assemblyman Robert Martin (R-Morris) stated, "[t]he bill doesn't do all that it could, but on balance, it does so much that it's better than what we have." *Id.*

to the passage of the Ethics Law, most municipalities did not have a code of ethics at all.¹⁶⁵ Citizens should be satisfied with the law since it will shield them from improper acts that may cause a variety of injuries, as well as stymie the proper functioning of government. Additionally, they can now require those who serve them to adhere to a common code of ethics set forth in the law. Local government officials and employees should welcome the bill since it serves as a conduit, delineating instances where they may be engaging in a conflict of interest. The law outlines what may possibly be a repugnant act with respect to official responsibilities to the public. Thus, the officials are protected from any illegal wrongdoing or public embarrassment that they may have otherwise been subjected to absent this law.

According to Governor Florio, having the consent, as well as the trust of the people, is what forms a good government.¹⁶⁶ The bill was signed by the Governor because the state deserves a good, honest government.¹⁶⁷ The Ethics Law may restore the public's trust in local government employees and officials by establishing this minimum standard of conduct. Citizens should question why some officials are so emphatically reluctant to fill out this simple form. Completing the financial source disclosure form should not take more than fifteen minutes. The sacrifice of a few minutes and some general information is a small price to pay to ensure the public's interests are being protected and advanced.

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¹⁶⁵ See *Hester*, *supra* note 41, at 9.

¹⁶⁶ Letter from the Office of the Governor, *supra* note 143, at 1. Governor Florio commented, "[w]hat makes a good government? It's not just having the consent of the people. It's having their trust, too. I'm talking about this town and every town in New Jersey. This county and every county in the state." *Id.*

¹⁶⁷ *Id.* The Governor stated in the news release that, "[t]he people of this state deserve honest government and they're going to get it." *Id.*