

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CFB 07108-05

AGENCY DKT. NO. LFB-02-006(B)

JO ANN HORVATH,

Petitioner,

v.

LOCAL FINANCE BOARD,

Respondent.

Joseph A. Pojanowski, III, Esq., for petitioner (Pojanowski & Trawinski,
attorneys)

Daniel P. Reynolds, Deputy Attorney General, for respondent (Anne Milgram,
Attorney General of New Jersey, attorney)

Record Closed: January 4, 2007

Decided: September 2, 2008

BEFORE **KEN R. SPRINGER**, ALJ:

STATEMENT OF THE CASE

This is an appeal by a local government officer from imposition of a \$200 penalty for alleged violations of the Local Government Ethics Act (Act), N.J.S.A. 40A:9-22.1 to -22.25. Respondent Local Finance Board (Board) in the Department of Community Affairs accuses petitioner Jo Ann Horvath (Horvath) of violating statutory prohibitions against conflicts of interest. In its complaint, the Board raises two issues:

First, the Board contends that Horvath's acceptance of the position of subregistrar of vital statistics for the Borough of Sussex while an immediate family

member had an interest in a funeral home was in substantial conflict with the proper discharge of her public duties and might reasonably be expected to prejudice her independence of judgment, contrary to N.J.S.A. 40A:9-22.9 (a) and (e).

Second, the Board contends that Horvath's signing of death certificates submitted by her husband as funeral director constituted the use of her official position to secure an unwarranted privilege or advantage and might reasonably be expected to impair her objectivity and judgment, contrary to N.J.S.A. 40A:9-22.9 (c) and (d).

Although Horvath admits the underlying factual allegations, she denies that her appointment to the position of subregistrar creates a conflict of interest, either actual or apparent. In addition, she maintains that her official duties were purely ministerial and that she exercised no discretionary authority that might present an opportunity for partiality or favoritism.

For the reasons that follow, the charges against Horvath are insufficient as a matter of law and the complaint must be dismissed.

PROCEDURAL HISTORY

By letter dated May 9, 2003, the Board initiated an investigation of a complaint against Horvath "for possible violations of the Local Government Ethics Law." On June 13, 2003, Horvath submitted her written response. One year later, on July 28, 2004, the Board issued a notice of violation sustaining two of the charges and assessing fines in the amount of \$100 each. Horvath filed a timely request for a hearing.

Subsequently, on June 16, 2005, the Board transmitted the matter to the Office of Administrative Law (OAL) for a hearing pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The OAL held a hearing on January 14, 2007, on which date the record closed.

FINDINGS OF FACT

All of the material facts are undisputed. **I FIND** the following facts:

Jo Ann Horvath and her husband Peter have lived at a house on 31 Bank Street in the Borough of Sussex, New Jersey for nearly thirty years. Her husband Peter is a licensed funeral director and operates the Pinkel Funeral Home at their place of residence. Their emancipated adult daughter Alexis is also a licensed funeral director and is involved in the operation of the funeral home. Petitioner holds a masters degree in vocational education and has taught business courses at the college and high-school level for eighteen years. She is not a licensed funeral director and, insofar as the record reflects, does not directly participate in operation of the funeral home. Peter and Jo Ann Horvath received annual income in excess of \$2,000 from operation of the Pinkel Funeral Home in the years 2001 and 2002.

Sussex Borough is a small community. It is one square mile in size and has a population of 2,400. There are only three full-time employees and one part-time employee at Borough Hall. Denise Zuidema, the borough clerk, is also the registrar of vital statistics by virtue of her office.¹ She appointed Loretta McDonald, the tax collector, as her deputy registrar.² Borough Hall does not open until 10:00 a.m. and closes at 2:00 p.m. Deputy Registrar Loretta McDonald performs the bulk of the vital statistics work in the Borough and leaves everyday at 2:00 p.m. Without the appointment of a subregistrar, it would be difficult for members of the public to obtain death certificates and burial permits after regular working hours. Thus, the subregistrar performs a service for the convenience of the public and not for any competitive advantage. For example, Jewish law requires that a body be buried before sundown on Friday. If Borough Hall happens to be closed, the next-of-kin would be unable to obtain the necessary burial permit. Similarly, if a body had to be shipped out of state, the survivors would be unable to make arrangements without issuance of a transit permit.

¹ In any district with a population of less than 5,000 persons and where the county clerk does not act as local registrar," the municipal clerk shall be appointed as local registrar." N.J.S.A. 26:8-11(c).

² Immediately upon her appointment, the registrar "shall appoint a deputy to assist in normal day-to-day operation of the office and . . . to act in the registrar's stead in case of absence, disability or death of the registrar." N.J.S.A. 26:8-17.

Horvath was first appointed as subregistrar in November 1984 and, at the time that the charges were filed, had held that position for nineteen years. She receives no compensation for her services. The local registrar's office covers a wide geographic territory, including the municipalities of Sussex, Hamburg, Wantage, Lafayette, Franklin, Ogdensburg, and Sparta, as well as several nearby municipalities in New York State. Because St. Clare's Hospital is situated in Sussex Borough, the registrar is called upon to issue death certificates for deaths occurring in that facility. Of approximately one-hundred death certificates issued annually, Horvath processed about twenty of them.

Horvath's duties as subregistrar are extremely limited. The registrar delegated to her authority to sign death and burial certificates, but nothing more. A sample death certificate entered into evidence displays three basic parts: Spaces numbered 1 through 23, pertaining to the decedent's name, address, date of birth, social security number, place of death, occupation, education, parentage and other biographical data, are filled out and certified to be accurate by a licensed funeral director. Spaces 25 through 31, relating to time of death, cause of death, performance of an autopsy and other medical information, are filled out and certified to be accurate by a physician or medical examiner. Space 24 is reserved for the signature of the local registrar and the date received. During her testimony, Horvath explained that she simply signs and dates the document, affixes the seal, collects fees payable to the Borough and provides the funeral director or other applicant with the requested number of certified copies of the certificate. Thereafter, she forwards the original certificate to the registrar or her deputy for review and verification.

According to Horvath's unrefuted testimony, she "does not go over the information" furnished by the funeral director and physician, but only "makes sure that all the boxes are filled in." In her own words, she does not possess any "latitude" or "exercise any independent judgment," but accepts at face value the information supplied by others. She views her role as limited "to accepting the death certificate as presented" and passing the fees along to the Borough. Throughout her long service as subregistrar, she has never refused to issue a death certificate "for any reason" and,

apart from this proceeding, no one has ever complained about her not doing her job properly.

Horvath freely acknowledges that she has processed death certificates signed by her husband or her daughter in the capacity of licensed funeral director. At the hearing, the Board produced copies of four death certificates signed by Horvath that originated with the Pinkel Funeral Home. In the place for signature of the funeral director, two were signed by her husband and two by her daughter. Proofs established that Horvath also issued death certificates for numerous other funeral directors, including the Ferguson Funeral Home in Sussex Borough, the Stroyan Funeral Home in Milford, Pennsylvania, the Knight-Auchmoody and Gray-Parker Funeral Homes in Port Jervis, New York, the Purta Funeral Home in Pine Island, New York and the Morse Funeral Home in Middletown, New York.

It is a common practice in the funeral industry for persons affiliated with one particular funeral home to issue death certificates for other funeral homes in the same locality. When Peter Horvath previously operated a funeral home in Clifton, New Jersey he used to get death certificates issued by a subregistrar at the Quinlan Funeral Home in the same city. An official publication of the New Jersey State Funeral Directors Association reported that funeral directors in Jersey City who require death certificates on weekends and holidays could obtain them from subregistrars at the Bromirski Funeral Home, the Greenville Funeral Home and the McLaughlin Funeral Home. Likewise, Horvath said that it is commonplace for funeral homes to serve as subregistrars in the southern part of the State.

CONCLUSIONS OF LAW

I CONCLUDE that Horvath's official duties as a subregistrar were ministerial in nature and did not give rise to any conflict of interest with her husband's funeral home business.

The Local Government Ethics Act was enacted to assure "that standards of ethical conduct and financial disclosure requirements for local government officers and

employees shall be clear, consistent, uniform in their application, and enforceable on a Statewide basis[.]” N.J.S.A. 40A:9-22.2(e). Wyzykowski v. Rizas, 132 N.J. 509, 512 (1993). The articulated objectives of the statutory scheme are to promote public confidence in the integrity of elected and appointed representatives and to prevent conflicts between the private interests and public duties of government officers. N.J.S.A. 40A:9-22.2(b) and (c). In furtherance of these purposes, the Legislature adopted a statutory code of ethics, N.J.S.A. 40A:9-22.5, which is applicable to all "local government officer[s]," N.J.S.A. 40A:9-22.3(g), and "government employee[s]." N.J.S.A. 40A:9-22.3(f). This code of ethics governs virtually every person who serves in local government, except individuals appointed to purely advisory bodies, and officials, such as school board members and municipal court personnel, who are guided by other equally rigorous requirements. Abraham v. Township of Teaneck Ethics Bd., 349 N.J. Super. 374, 376 (App. Div. 2002); Department of Community Affairs, Local Finance Bd. v. Cook, 282 N.J. Super. 207, 209 (App Div. 1995).

Subsection (a) of N.J.S.A. 40A:9-22.5 provides that:

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.

Similarly, (c) continues that:

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.

Subsection (d) adds that:

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,

Finally, subsection (e) recites that:

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.

At the outset, the Board concedes, as it must, that the specific provision in Title 26 prohibiting funeral directors from appointment as the local registrar, N.J.S.A. 26:8-16, does not apply here. Horvath is not a funeral director and she does not serve as the local registrar. Nonetheless, the Board asserts that Horvath's appointment as subregistrar violates the generic ban in Title 40A against a public official engaging in any activity that would compromise her independence of judgment, secure unwarranted privilege or advancement or impair her objectivity and judgment.

Called as a witness, David Nenno, a Board staff member, testified generally that it is a substantial conflict of interest for anyone with an immediate family member in the funeral business to perform official public duties involving the issuance of death certificates and burial permits. When pressed as to how such conflict arises, Nenno vaguely suggested that it would allow Horvath "to circumvent the system of checks and balance in the statute." He was unable, however to point to any specific example of how Horvath's independence of judgment or objectivity could be negatively impacted or how she gained any special privilege or advantage for herself or her husband. There is no evidence, for instance, that customers might prefer the Pinkel Funeral Home over others because of Horvath's holding of government office or might enjoy some preference in obtaining death certificates or permits that other funeral homes do not have. To the contrary, the undisputed record establishes that Horvath performs her service as a convenience to the public and that she is equally available to all funeral directors who request her services.

By definition, ministerial acts do not involve the exercise of discretion. See, e.g. Black's Law Dictionary 996 (6th ed. 1990) (defining "ministerial act" as act which "person or board performs under a given state of facts in a prescribed manner . . . without regard to or the exercise of . . . judgment upon the propriety of the act being done"),

cited approvingly in Kemp by Wright v. State, 147 N.J. 294, 308 (1997). Horvath's insistence that she does not possess any discretionary power and acts solely in a ministerial capacity is buttressed by a comparison of the enabling legislation for the position of local registrar or her deputy with that of subregistrar. Duties of the local registrar include examining each certificate of death "in order to ascertain whether or not it has been made in accordance with law and the instructions of the State registrar" and, if such document is incomplete and unsatisfactory, "to have same corrected." N.J.S.A. 26:8-25(e). In the event of the absence, disability or death of the local registrar, the deputy registrar succeeds to the same duties. N.J.S.A. 26:8-17. In marked contrast, the subregistrar's duties are more limited. A subregistrar is authorized only "to receive certificates . . . of deaths and to issue burial or removal permits and transit permits." N.J.S.A. 26:8-18. Unlike the local registrar and the deputy registrar, the subregistrar lacks authority to determine the legal validity of documents. Since Horvath's role was entirely ministerial, she did not exercise any independent judgment and her objectivity and independence could not be impaired by her husband's ownership interest in a funeral home.

ORDER

It is **ORDERED** that all charges against Horvath be dismissed.

I hereby **FILE** my initial decision with the **LOCAL FINANCE BOARD, DIVISION OF LOCAL GOVERNMENT SERVICES**, for consideration.

This recommended decision may be adopted, modified or rejected by the **LOCAL FINANCE BOARD, DIVISION OF LOCAL GOVERNMENT SERVICES**, which by law is authorized to make a final decision in this matter. If the Local Finance Board, Division of Local Government Services, does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **LOCAL FINANCE BOARD, DIVISION OF LOCAL GOVERNMENT SERVICES, 101 South Broad Street, PO Box 803, Trenton, New Jersey 08625-0803**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

September 2, 2008

DATE

KEN R. SPRINGER, ALJ

Date Received at Agency:

September 2, 2008

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

db

APPENDIX

LIST OF WITNESSES

1. David Nenno, staff member, Local Finance Board
2. Jo Ann Horvath

LIST OF EXHIBITS

No.	Description
P-1	Blank certificate of death, promulgated in June 1991
P-1A	Color-coded copy of P-1
P-2	Copy of excerpt from The Forum, official publication of the New Jersey State Funeral Directors Association, Inc., Vol., 73, No. 1, (October/November 2006)
A-2(id)	Copy of grievance filed by Police Officer Larry Martin, dated April 27, 2005
R-1	Copy of letter to Jo Ann Horvath from Matthew U. Watkins, dated May 9, 2003
R-2A	Copy of letter to Matthew U. Watkins from Joseph A. Pojanowski III, Esq., dated June 13, 2003
R-1B	Copy of certification of Joann Horvath, dated June 12, 2003
R-3(id)	Copy of certification of Peter P. Horvath, dated June 13, 2003.
R-3A	Copy of financial disclosure statement, filed on May 10, 2001
R-3B	Copy of financial disclosure statement, filed on June 19, 2002
R-4A	Copy of letter to Joseph A. Pojanowski III, Esq. from Susan Jacobucci, dated July 28, 2004
R-4B	Copy of notice of violation, dated April 14, 2004
R-5	Copy letter to Patricia Parkin McNamara, dated August 4, 2004
R-6A	Copy of death certificate, dated April 18, 2001

R-6B	Withdrawn
R-6C	Copy of death certificate, dated December 29, 1998
R-6D	Copy of death certificate, dated July 1, 1999
R-7E	Copy of death certificate, July 4, 2000
R-7F	Copy of death certificate, withdrawn