

The following pages indicate that a county or municipal official violated the Local Government Ethics Law. It is possible, however, that the violation was, or will be, reversed by another tribunal. For example, if the pages below reveal that an Administrative Law Judge (ALJ) found that a violation occurred, it is possible that the Local Finance Board (LFB) later rejected the ALJ's findings. Also, if the pages below reveal that the Local Finance Board found a violation, the official may have subsequently appealed to the Appellate Division of the Superior Court. In sum, readers should be aware that a finding by an ALJ or the LFB might not be the final outcome, and that further inquiries may need to be made.

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CFB 06902-05S

AGENCY DKT. NO. LFB 02-028

LOCAL GOVERNMENT FINANCE BOARD,

Petitioner,

v.

GARY ZIEGLER,

Respondent.

Julie Cavanagh, Deputy Attorney General, for petitioner (Zulima V. Farber, Attorney General of New Jersey, attorney)

John C. Eastlack, Jr., Esq., for respondent (Holston, MacDonald, Uzdavinis, Eastlack, Ziegler & Lodge, attorneys)

Record Closed: April 7, 2006

Decided: April 24, 2006

BEFORE **JEFF S. MASIN**, ALJ:

The Local Finance Board (“LFB”) charges that on or about December 7, 2001, Gary Ziegler violated two provisions of the Local Government Ethics Law, namely, N.J.S.A. 40A:9-22.5(a) and (d), when, acting as the Director of the Wildwood Water Utility, a publicly owned entity, he certified in reference to two invoices for work allegedly performed for the Utility by A.C. Schultes, Inc., that he had personal knowledge of the materials and supplies received, or the services rendered, by that company in regard to emergency repair of Well 39A in August 2001 (Invoice 14098) and of Well 35 in July 2001 (invoice 13989). It is not disputed that at the time that he acted, Mr. Ziegler owned 21% of A.C. Schultes, a company with which he had been associated since 1971 and in which he had been a partner since 1984. The LFB notified Mr. Ziegler of the alleged violations by letter dated August 13, 2004. He was advised that he could reply to the allegations, and did so. On November 10, 2004, the LFB issued a Notice of Violation to Mr. Ziegler, charging the violations detailed above and assessing a fine of \$200 for the violation of the two sections of the statute. Mr. Ziegler requested an administrative hearing and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and

N.J.S.A. 52:14F-1 to -13. A hearing was held before this judge on March 9, 2006. Counsel filed post-hearing briefs and the record closed on April 7, 2006.

Before considering the evidence, it will be helpful to set forth the two provisions of the Local Government Ethics Law purportedly violated by Mr. Ziegler. N.J.S.A. 40A:9-22.5(a) and (d) provide

a. No local government officer or employee or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;

d. No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

Prior to the start of the hearing, the parties entered into a Stipulation of Facts and Documents, as follows:

1. At all times relevant hereto, Petitioner Gary Ziegler was employed by the City of Wildwood as the Director of the Wildwood Water Utility.

2. At all times relevant hereto, Petitioner Gary Ziegler held a 21% interest in a company known as A.C. Shultes, Inc., which interest was disclosed to Mayor Duane Soan prior to November, 2001.

3. On January 29, 2001, the Water Well Maintenance contract for the City of Wildwood was awarded to A.C. Shultes pursuant to the public bidding process.

4. On or about March 28, 2001, a contract was entered into between the City of Wildwood and A.C. Shultes based upon the January 29, 2001, award.

5. On or about December 7, 2001, in reference to Invoice 14098, Gary Ziegler, in his capacity as the Director of the Wildwood Water Utility, certified that he had personal knowledge of the materials and supplies received, or the services rendered, from or by A.C. Shultes, in regard to an emergency repair of Well 39A in August, 2001. Invoice 14098 was also signed by Gordan Ball, the purchasing agency for the city

of Wildwood, and on December 3, 2001, it was signed by Mary Liss, the office manager for A.C. Schultes. Mayor Sloan initialed the invoice on December 11, 2001

6. On or about December 7, 2001, in reference to Invoice 13989, Gary Ziegler, in his capacity as the Director of the Wildwood Water Utility, certified that he had personal knowledge of the materials and supplies received, or the services rendered, from or by A.C. Schultes, in regard to an emergency repair of Well 35 in July, 2001. Invoice 13989 was also signed by Gordan Ball, the purchasing agent for the City of Wildwood, and on December 3, 2001, it was signed by Mary Liss, the office manager for A.C. Schultes. Mayor Sloan initialed the invoice on December 11, 2001.

As there is no dispute as to the positions and interests held by Mr. Ziegler or the signing of the certifications for the invoices or the signing by others of those documents, the circumstances surrounding the relationship of Ziegler, Schultes and a company known as Azurix must be explored. Mr. Ziegler is a licensed Professional Engineer, a licensed operator of water distribution and treatment and a master well driller. As noted, his employment with Schultes dates to 1971. He became a partner in the company in 1984. In 1988, Schultes merged with Stout Environmental, but Schultes divested itself of that company in 1992. Schultes began to work part-time for Wildwood as the licensed operator for its water utility in 1992. In May 2000, the city outsourced the Water Utility's operations to Azurix, which later merged with American Water. All of the municipal employees at the Water Utility became employees of Azurix, except for Mr. Ziegler, who remained a Wildwood employee at the request of the mayor. He was then charged with supervising Azurix's operations at the Water Utility. It is apparently not disputed that Mr. Ziegler's ownership interest in Schultes was well-known and fully disclosed to the governing body, which, as a Commission form of government included the Mayor, Duane Sloan, who served also as the department head for the Wildwood Water Utility.ⁱ Mr. Ziegler would provide weekly written reports to the Mayor in this capacity, as demonstrated by several of these reports entered into evidence. These reports would themselves highlight the conflict, as in the April 30, 2002 report for the

ⁱ Mr. Ziegler's Local Government Ethics Law Financial Disclosure Statement, dated August 5, 2002, listed Schultes, Inc. as a business organization in which he had an interest.

week of April 12, 2002 through April 19, 2002, Exhibit J-11h, where, in discussing work performed by Schultes on Well 34 and 46, Ziegler notes,

As you are aware, I still have ownership in A.C. Schultes, Inc. and therefore they will continue to receive work from the Wildwood Water Utility only if this work is publicly bid. My ownership position causes me to have a conflict of interest which I have always been extremely careful of to insure that all work directed to A.C. Schultes, Inc., is publicly bid.

[See also the report of May 14, 2002, Item 2., Exhibit J-11K]

Ziegler also testified that Azurix was aware of his conflict.

Mr. Ziegler testified that he signed all invoices for work done for the Utility regardless of which vendor performed the work. As he only worked one day a week for Wildwood, he had to rely upon the contractor to advise him as to the progress of work. Employees of Azurix with whom he met at least once a week and received written reports would thus tell him whether work was taking place as expected. As the contract administrator for Wildwood, he was not expected to himself "eyeball" the work. An affidavit provided by Gregory Lanza, the chief pumping station operator at the Water Utility since May 2000, advised that as to the work on Wells 35 and 39A, he notified Ronald Grookett, the general manager for Azurix's operation at the Water Utility, that the work performed by Schultes was done satisfactorily. Mr. Grookett's own affidavit confirms that Mr. Lanza contacted Schultes to request that it perform the emergency work on Wells 35 and 39A and that Mr. Lanza inspected the work and notified Mr. Grookett that the work had been satisfactorily performed. Mr. Ziegler testified that he utilized "reasonable procedures" to assure that the work he was certifying had been satisfactorily performed and that in Mr. Grookett's case, he had never been employed by Schultes or received any compensation from that company. The invoices themselves could not be paid based upon Mr. Ziegler's signature, but had to be signed by the Mayor as department head. The invoices were then listed on the "bill list" for approval by the vote of the Township Committee. Indeed, it was not absolutely necessary that Ziegler sign off on the invoices, as he did not in connection with No. 13799, which was paid on the approval of Mayor Sloan. Ziegler was never the last person who had to sign off in order for an invoice to be approved for listing on the "bill

list.” However, he acknowledged that Mayor Sloan would rely upon Ziegler’s knowledge and expertise when the mayor would sign off on the invoices. He also agreed that in his capacity as the director of the Utility, he supervised Azurix, which in turned supervised Schultes, regarding the work that each of these businesses performed on behalf of the Utility. As an example of the relationships, he acknowledged the reference in Item 4 of the October 24, 2000 report to the Mayor for the week of October 13 through 20, 2000, in which he noted that there were a number of outstanding contract issues with Azurix and that he would be setting up a meeting with that company. In a May 17, 2001 report for the week of May 4 through 11, 2001 (J-11C), he reported that Azurix was slow in obtaining quotations for the maintenance of Unit #3. (Item 2). In Item #3, he noted that he had advised Azurix as to its responsibility per the contract to prepare a report to the Board of Public Utilities. He also had the responsibility for authorizing purchase orders, as noted in connection with work performed by Schultes discussed in Item #2 on the July 26, 2001 report for the week of July 13 through July 20, 2001 and in Item #3 on the August 7, 2001 report for the week of July 27 through August 3, 2001 (J-11F). He described his relationship with Azurix as “strictly adversarial.” He had to force them to do things required by the contract. He had conflicts with Azurix over its performance and they did not perform as they should have. He would expect them to be more critical of the work they supervised because he was more critical of them.

Mr. Ziegler did not have any agreement that he would not sell his interest in Schultes, but he noted that it was very difficult to sell a minority share in a non-publicly held company. He would hope to make a profit out of any such sale.

Discussion

It is acknowledged by Mr. Ziegler that his position with Schultes created a conflict with his responsibilities as the Director of the Wildwood Water Utility. However, he argues that not every conflict amounts to a disqualifying circumstance, citing case law that finds that the circumstances of each situation must be examined to determine whether they “could reasonably be interpreted to show that they have the likely capacity to tempt the official to depart from his sworn public duty.” Van Itallie v. Borough of

Franklin Lakes, 28 N.J. 258, 268 (1958). In their briefs the parties contest whether it is critical to the determination of a violation of the law that the signatures of Mr. Ziegler upon the invoices were not the final necessary step to allow payment, that the Mayor as department head had to sign off and that the Commissioners had to vote on the items on the “bill list.” But what is striking about the situation is that Ziegler was supervising the activities of Azurix, a company that in turn had to supervise the activities of Schultes, a company which Azurix knew was partially owned by the very person to whom it reported at the Water Utility as to the work performed by Schultes. So that while the certification of the two invoices listed in the charges may have been an unnecessary act, as implied by the reference to the payment of the invoice that Ziegler did not sign, or may be characterized as merely a ministerial action, the potential for actual conflicts and for favoritism or for a less than wholesome relationship between these persons and business entities surely existed. Ziegler described a “strictly adversarial relationship” with Azurix. Given the entanglements of his supervisory duties and ownership interests and Azurix’s need to respond to him as its supervisor while simultaneously supervising the activities of a company it knew he was a partial owner of, and his need to supervise fairly and independently the performance of a company (Azurix) that was in turn responsible to properly supervise a company (Schultes) that he owned, the fact that they were “adversarial” points out that while here there is no claim at all of any actual impropriety between or among them, the potential for actual conflict of the interests of the City and Azurix implied by an adversarial relationship and a need to force Azurix to properly perform its contractual responsibilities also implies that the necessary or expected arms length dealing of the manager of the water department and its contracted agent could have been compromised by the nature of the several relationships between them. It is not unreasonable that the objectivity and independence that is required for the public to receive the fullest measure of responsibility from a public official could have been compromised by so tangled a web of relationships. Thus, I **CONCLUDE** that Mr. Ziegler should not have been involved in signing invoices related to work performed by Schultes. As the charges here relate solely to the signing of these invoices, I do not treat with the issue of Mr. Ziegler’s continued activities as manager of the Water Utility in regards to the concerns expressed herein.

N.J.S.A. 40A:9-22.10 (a) provides for penalties for violations of the Ethics Law.

An appointed local government officer or employee found guilty by the Local Finance Board or a county or municipal ethics board of the violation of any provision of P.L.1991, c.29 (C.40A:9-22.1 et seq.) or of any code of ethics in effect pursuant to P.L.1991, c.29 (C.40A:9-22.1 et seq.), shall be fined not less than \$100.00 nor more than \$500.00, . . .

The penalties advanced by the Local Government Finance Board here were \$100 for each of the two violations. While Mr. Zeigler's actions violated the conflict law, the appropriate penalty here is a minimal one. Therefore, the imposition of a \$100 fine for each offense is appropriate. It is **ORDERED** that the respondent shall pay a total fine of \$200.

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 (45) 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 (13) 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.

April 24, 2006 _____

DATE

JEFF S. MASIN, ALJ

E-mail Receipt of Initial Decision Confirmed by the Local Finance Board on:

April 24, 2006

DATE

Mailed to Parties:

DATE

mjm

OFFICE OF ADMINISTRATIVE LAW

EXHIBIT LIST

JOINT EXHIBITS:

- J-1 Vouchers and Invoice #14098 for emergency service to pull repair and reinstall well #39A on 8/3/01, 8/9/01 and 8/10/01
- J-2 Vouchers and Invoice #13989 for emergency service in well #35, supplied labor, material and equipment to pull repair and install new pump in well #35 on 7/18/01, 7/19/01 and 7/20/01
- J-3 Voucher to replace meter well #3, for invoice #13799
- J-4 Financial Disclosure Statement of Gary J. Ziegler dated 8/5/02
- J-5 Letter dated 8/13/04 from Susan Jacobucci to Gary Zeigler regarding Notice of Investigation
- J-6 Resolution No. 101-3-01 of the City of Wildwood, Cape May County, New Jersey with attachments
- J-7 Advertisement for Bids dated 1/17/01, for Water Well Maintenance Bid #89-01
- J-8 Invitation to Bid and proposal form for Bid #89 from A.C. Schultes, Inc.
- J-9 Agreement of 3/28/01 for Bid #89-01
- J-10 Local Finance Board Notice of Violation dated 11/10/04
- J-11a Letter dated 10/24/00 from Gary J. Ziegler, P.E., to Mayor Duane Sloan
- J-11b Letter dated 5/1/01 from Gary J. Ziegler, P.E., to Mayor Duane Sloan
- J-11c Letter dated 5/17/01 from Gary J. Ziegler, P.E., to Mayor Duane Sloan
- J-11d Letter dated 7/26/01 from Gary J. Ziegler, P.E., to Mayor Duane Sloan
- J-11e Letter dated 8/1/01 from Gary J. Ziegler, P.E., to Mayor Duane Sloan
- J-11f Letter dated 8/7/01 from Gary J. Ziegler, P.E., to Mayor Duane Sloan
- J-11g Letter dated 1/28/02 from Gary J. Ziegler, P.E., to Mayor Duane Sloan
- J-11h Letter dated 4/30/02 from Gary J. Ziegler, P.E., to Mayor Duane Sloan
- J-11i Letter dated 4/30/02 from Gary J. Ziegler, P.E., to Mayor Duane Sloan
- J-11j Letter dated 6/5/02 from Gary J. Ziegler, P.E., to Mayor Duane Sloan
- J-11k Letter dated 5/14/02 from Gary J. Ziegler, P.E., to Mayor Duane Sloan
- J-11l First pages of letters dated 6/5/02 and 5/14/02 from Gary J. Ziegler, P.E., to Mayor Sloan
- J-11m Letter dated 6/5/02 from Gary J. Ziegler, P.E., to Mayor Duane Sloan

FOR THE PETITIONER:

None

FOR THE RESPONDENT:

- R-1 Affidavit of Gregory Lanza notarized on 1/18/06
- R-2 Affidavit of Ronald Groomett notarized on 1/20/06
- R-3 Affidavit of Thurman Thompson notarized on 1/20/06
- R-4 Financial Disclosure Statement of Gary J. Ziegler dated 8/5/02