

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

ORDER

PARTIAL SUMMARY DECISION

OAL DKT. NO. CFB 2433-00

AGENCY DKT. NO. LFB 97-028

AILEEN BAROW,

Petitioner,

v.

LOCAL FINANCE BOARD,

Respondent.

Carl A. Bergmann, Esq., for petitioner (Wilbert, Montenegro and Thompson, attorneys)

Ronald V. Smith, Deputy Attorney General, for respondent (David Samson, Attorney General of New Jersey, attorney)

BEFORE **JOSEPH F. FIDLER**, ALJ:

The Local Finance Board (Board) has charged that petitioner Aileen Barow, while Mayor of Lavallette Borough, was involved in a conflict of interest in violation of the Local Government Ethics Law, *N.J.S.A.* 40A:9-22.1 et seq., because (1) in January 1995, Ms. Barow appointed her boyfriend, Mr. Paul Grosko, who was the Borough's Zoning and Code Enforcement Official, to the Lavallette Borough Planning Board; (2) while serving as Mayor, Ms. Barow became Mr. Grosko's immediate supervisor and maintained and approved his timesheets granting compensation and vacation time to a part-time employee; and (3) in July 1996, Ms. Barow broke a three to three tie and voted to have Mr. Grosko's personnel file expunged of a disciplinary action.

The Board issued a Notice of Violation, alleging the foregoing conduct and determining that Mayor Barow had committed three violations each of *N.J.S.A.* 40A:9-22.5c and -22.5d.

Pursuant to *N.J.S.A.* 40A:9-22.10, the Board assessed a civil penalty in the amount of \$100. for each of the violations, for a total of \$600. Ms. Barow requested a hearing and the Board transferred the matter to the Office of Administrative Law (OAL) for determination 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. Counsel for the Board has moved for summary decision, pursuant to *N.J.A.C.* 1:1-12.5, and counsel for Ms. Barow has filed papers in opposition to the motion.

N.J.S.A. 40A:9-22.5c and -22.5d state that

c. 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;

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;

There are sufficient material facts existing without genuine controversy to warrant entry of partial summary decision in the Board's favor as a matter of law. It is undisputed that petitioner Barow and Paul Grosko had a personal, intimate relationship for a number of years. He was employed full-time as an electrical inspector for the Ocean County Building Department, with work hours from 8:00 a.m. to 4:00 p.m., Monday through Friday. Mr. Grosko also worked part-time for the Borough of Lavallette as a Code and Zoning Official. The position with the Borough required office hours from 5:00 p.m. to 7:00 p.m. on Monday and from 9:00 a.m. to 11:00 a.m. on Tuesday and Saturday. Petitioner Barow acknowledges that she appointed Mr. Grosko to the Planning Board on January 1, 1995, asserting that he was the most qualified, available and willing person for the uncompensated position, and that she did so only after seeking the advice of the Planning Board attorney.

Petitioner Barow does not deny that she approved Mr. Grosko's use of compensatory time relating to his part-time position with the Borough. He frequently used compensatory time when he would otherwise have been expected to be keeping office hours in the Borough on Tuesdays.

Ms. Barrow asserts that she had the capacity and responsibility as Mayor to consult with Councilman Benjamin Brockwell or Municipal Court Clerk Barbara Brown before signing of on any compensatory time, thereby implementing a check system.

Petitioner Barow also does not deny that she cast a vote to break a Borough Council tie on Resolution 1996-195B, on July 12, 1996. Passing with her vote, the resolution provided that a minor disciplinary infraction would be expunged from Paul Grosko's personnel file. Petitioner contends that she voted to break the tie only after seeking the advice of the Borough Solicitor. She further asserts that passing the resolution allowed the Borough to settle a claim against it by Mr. Grosko for a minimum cash outlay when its exposure for damages and legal fees would be significant if he had pursued litigation.

Petitioner contends that her actions regarding Mr. Grosko were in furtherance of her duties as Mayor. Therefore, she asserts that no personal conflict of interest existed. It is petitioner's position that she did not secure any unwarranted privileges for Mr. Grosko in her official capacity as Mayor, and that she did not act with impaired independence of judgment.

DISCUSSION

Under the Uniform Administrative Procedure Rules, a party may move for summary decision if

the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law. When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding. If the adverse party does not so respond, a summary decision, if appropriate, shall be entered.

[*N.J.A.C. 1:1-12.5(b).*]

The summary decision rule is essentially the same as the summary judgment rule under the New Jersey Rules of Court, which permits a party to move for summary judgment if

the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to judgment or order as a matter of law. An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.
[R. 4:46-2(c).]

The New Jersey Supreme Court in *Brill v. Guardian Life Insurance Co.*, 142 N.J. 520 (1995) provided further guidance for the summary judgment analysis. In so doing, the Court elaborated upon the standards established in *Judson v. People's Bank and Trust Co. of Westfield*, 17 N.J. 67, 74-75 (1954). Under the *Brill* standard, as before, a motion for summary decision may only be granted where there are no genuine disputes of material fact. The determination as to whether disputes of material fact exist is made after a discriminating search of the record, consisting as it may of affidavits, certifications, documentary exhibits and any other evidence filed by the movant and any such evidence filed in response to the motion, with all reasonable inferences arising from the evidence being accorded to the opponent of the motion. This search should reveal

“whether the evidence presents a sufficient disagreement to require [a hearing] or whether it is so one-sided that one party must prevail as a matter of law.” *Brill, supra*, at 536, citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-252 (1986).

The Local Government Ethics Law was enacted by the Legislature in recognition that local public officers and employees hold their positions as a public trust and that the public's confidence in the integrity of government is tied to the ethical nature with which these local officials carry out their public functions. N.J.S.A. 40A:9-22.2a and -22.2b. The purpose of the Act is to provide a method of assuring 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, and to provide these officers and employees with advice and information concerning possible conflicts of interest which might

arise in the conduct of their public duties. *N.J.S.A.* 40A:9-22.2e. To effectuate this purpose, the Act established a statewide statutory Code of Ethics governing the conduct of local government officials and employees. *N.J.S.A.* 40A:9-22.5. The Local Finance Board has jurisdiction to govern and guide the conduct of local government officers or employees who are not otherwise regulated by a county or municipal code of ethics promulgated in accordance with the Act.

The Legislature found that even the perception of a conflict between the private interests and the public duties of a government officer or employee can imperil the public's trust and confidence. *N.J.S.A.* 40A:9-22.2c. *N.J.S.A.* 40A:9-22.5(d), as set forth above, prohibits a local government officer, such as petitioner, from acting in her official capacity in any matter in which she has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair her objectivity or independence of judgment. This prohibition codifies a long standing principle of common law, that is, that a public official is disqualified from acting in a matter in which he has a conflicting interest that may interfere with the impartial performance of his public duty. *Wyzykowski v. Rizas*, 132 *N.J.* 509, 523, (1993), citing *Scotch Plains-Fanwood Bd. of Educ. v. Syvertsen*, 251 *N.J. Super.* 566, 568 (App. Div. 1991).

In determining whether a particular interest is sufficient to disqualify, “[t]he question will always be whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the official to depart from his sworn public duty.” *Wyzykowski, supra*, citing *Van Itallie v. Franklin Lakes*, 28 *N.J.* 258, 268 (1958). Not every circumstance will serve to disqualify an official:

Local governments would be seriously handicapped if every possible interest, no matter how remote and speculative, would serve as a disqualification of an official. If this was so, it would discourage capable men and women from holding public office. Of course, courts should scrutinize the circumstances with great care and should condemn anything which indicates the likelihood of corruption or favoritism. But in doing so they must also be mindful that to abrogate a municipal action at the suggestion that some remote and nebulous interest is present, would be to unjustifiably deprive a municipality in many important instances of the services of its duly elected or appointed officials. The determinations of municipal officials should not be approached with a general feeling of suspicion, for as Justice Holmes has said, “Universal distrust creates universal incompetency.”

[*Wyzykowski, supra*, 132 *N.J.* at 523-24 (quoting *Graham v. United States*, 231 *U.S.* 474, 480, 34 *S.Ct.* 148, 151, 58 *L.Ed.* 319, 324 (1913))].

Even so, the Court in *Wyzykowski* further explained that actual proof of dishonesty need not be shown:

An actual conflict of interest is not the decisive factor, nor is ‘whether the public servant succumbs to the temptation,’ but rather whether there is a potential for conflict. *Griggs v. Borough of Princeton*, 33 *N.J.* 207, 219, (1960) (citing *Aldom, supra*, 42 *N.J. Super.* at 502). A conflicting interest arises when the public official has an interest not shared in common with the other members of the public. *Id.* 33 *N.J.* at 220-21. Another way of analyzing the issue is to understand that “[t]here cannot be a conflict of interest where there do not exist, realistically, contradictory desires tugging the official in opposite directions.” *LaRue v. Township of East Brunswick*, 68 *N.J. Super.* 435, 448 (App. Div. 1961).

[*Wyzykowski, supra*, 132 *N.J.* at 524]

In *Griggs v. Princeton Borough, supra*, 33 *N.J.* 207, the Court considered whether an employment relationship, even a limited one, is a sufficient connection between a public official and an outside entity such that the official's acting in an official capacity upon matters involving that entity constituted a conflict of interest in violation of the Code of Ethics, even where there was no allegation of actual corruption. The Court found that two professors associated with Princeton University who were also members of the local borough council voted on a matter involving a blighted area in which a municipal improvements corporation owned a significant amount of property. The University held a controlling interest in the improvements corporation. The Court held that the professors' conduct violated the Ethics Law. Their interests as employees of the University, which itself had a significant interest in this matter of public concern upon which these council members voted, created a conflict. The Court said that

It is true that the prime interests of [the professor-councilmen] in the University are in its academic affairs. But the same long standing association which gives these men security in their positions could tend to bind their loyalties to the University in such a manner that they would be interested in all matters affecting the institution . . . The potential for psychological influences cannot be ignored . . . We do not hold that these matters had an effect in the instant case . . . [n]evertheless, we perceive the rule to be that the

mere existence of a conflict, and not its actual effect, requires the official action to be invalidated.

[*Id.* at 220]

The Judiciary has applied the above common-law principles to several different types of conflict cases. These cases can be “distilled” into four types of conflicting “interests” that require disqualification: direct pecuniary interests, indirect pecuniary interests, direct personal interests, and indirect personal interests. *Wyzykowski, supra*, at 524-25 (citing Michael Pane, *Conflict of Interest: Sometimes a Confusing Maze, Part II, New Jersey Municipalities*, March 1980 at 8,9). Regarding application of *N.J.S.A. 40A:9-22.5(d)*, it may be stated plainly that this provision of the Local Government Ethics Law “demands that an officeholder discharge duties with undivided loyalty.” *McDougall v. Weichert* 144 *N.J.* 380, 401 (1996). Specifically, “if the direct or indirect financial or personal involvement attaches to: (1) the officer or employee, (2) a member of the officer's or employee's ‘immediate family’ or (3) a ‘business organization’ in which the officer or employee has an ‘interest,’ this is sufficient to disqualify the officer or employee if it rises to the level that it ‘might reasonably be expected to impair his/her objectivity or independence of judgment.’” *Martine v. Local Fin. Bd.* 96 *N.J.A.R.2d* (CAF) 111, 115 (footnotes omitted).

Martine was a member of the Borough Council that approved payments to Bergen Community Health Care (BCHC), for whom she worked as part-time registered nurse. The Board of Health had contracted with BCHC for the provision of health services to the Borough. Bills rendered for services provided were approved by vote of the Borough Council and Martine voted to approve the bills. The Board determined that she had violated *N.J.S.A. 40A:9-22.5(d)*. Martine appealed and Chief Administrative Law Judge Harned upheld the Board's decision. She found that Martine had a direct financial interest based upon her employment relationship with BCHC and that such an interest could reasonably be expected to impair Martine's objectivity and independence in the exercise of her Council duties. The Judge found that the public could have reasonably questioned whether Martine's ability to be objective was compromised, both in respect to her consideration of the bills themselves and as to whether the services provided by her employer to the Board of Health satisfied its contractual obligations. *Martine, supra*, at 113. The Board adopted Chief Judge Harned's determination.

In *Lawrence J. Tighe, Jr. v. Local Finance Board*, 97 N.J.A.R. 2d (CAF) 76, Tighe was a member of the Independence Township Board of Adjustment and was also the President and co-owner of Radio New Jersey, Inc., which owned and operated a local radio station. He was found to have acted in conflict with the Code of Ethics when he voted on a motion to approve a use variance and a site plan submitted by Bell Atlantic Mobil Systems, Inc. to construct a cellular telephone tower and utility building. Tighe had a financial interest with Bell, because Bell leased space on a transmission tower owned by Radio New Jersey, Inc. That lease contained an option for extensions for three additional five-year periods.

The Administrative Law Judge found that Tighe's financial involvement with Bell could not reasonably be expected to have impaired his objectivity or independence of judgment and that his actions were not in violation of N.J.S.A. 40A:9-22.5(d). The Judge stated that while he recognized that an actual conflict of interest was not necessary in order to prove any involvement that might reasonably be expected to impair objectivity or independence of judgment, nevertheless, it is minimally necessary to be able to articulate how or in what way that could occur. *Tighe, supra*, at 97 N.J.A.R.2d (CAF) 78. The Board reversed. It found that Tighe's involvement with Radio New Jersey, Inc., which had much to gain if Bell renewed its lease, was an interest that could have reasonably be seen as affecting the undivided loyalty that N.J.S.A. 40A:9-22.5(d) demanded of Tighe. Thus, Tighe acted in violation of the Code of Ethics and the Board assessed a fine. *Tighe, id.* at 80-81. The Board made clear its view that once an involvement is shown, only a fanciful or nebulous potential for conflict will defeat the charge. *Id.* at 81.

In the present matter, it is undisputed that petitioner at relevant times had a personal, intimate relationship with Paul Grosko, the Borough of Lavallette's Zoning and Code Enforcement Official. It is also undisputed that while serving as Borough Mayor, petitioner became Mr. Grosko's immediate supervisor and maintained and approved his timesheets, granting compensation and vacation time to him as a part-time employee. It is undisputed that petitioner appointed Mr. Grosko to the Borough Planning Board in January 1995, and in July 1996, petitioner broke a three to three tie and voted to have Mr. Grosko's personnel file expunged of a disciplinary action.

Petitioner contends that her actions regarding Mr. Grosko were in furtherance of her duties as Mayor and that no personal conflict of interest existed. However, it is clear that petitioner's long-term, intimate relationship with Mr. Grosko was a personal involvement as that term should be understood pursuant to *N.J.S.A. 40A:9-22.5(d)*. While it is petitioner's position that she did not secure any unwarranted privileges for Mr. Grosko in her official capacity as Mayor, and that she did not act with impaired independence of judgment, the key factor is that she had an interest not shared in common with other members of the public.

It is reasonable to interpret the circumstances of petitioner's interest as showing the likely capacity to tempt her from her sworn public duty. Petitioner nevertheless acted in her official capacity in the three matters described where her direct personal involvement was of a nature that might reasonably be expected to impair her objectivity or independence of judgment. Thus, I **CONCLUDE** that petitioner's conduct constituted three violations of *N.J.S.A. 40A:9-22.5(d)*, for which the minimum penalty of \$100. per violation was appropriately assessed. Respondent has established that it is entitled to partial summary decision on this prong of the matter.

Petitioner has also been charged with three violations of *N.J.S.A. 40A:9-22.5(c)*, which provides 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. In arguing for summary decision under this subsection, respondent has cited several cases for the proposition that ethical violations have been found even where the government official did not use his position to secure unwarranted privileges or advantages. However, those cases all refer to violations of *N.J.S.A. 40A:9-22.5(d)*, and not to violations of *N.J.S.A. 40A:9-22.5(c)*.

The conduct alleged to be in violation of *N.J.S.A. 40A:9-22.5(c)* is the same as analyzed above, but the result on the summary decision motion must be different. This is so because this subsection of the Local Government Ethics Law is not violated simply upon the reasonable perception of conflict; it requires an actual showing of state of mind or intent. While petitioner does not dispute the conduct alleged by the Local Finance Board, she asserts that her actions were advantageous to the best interests of the public and that she exercised her duties with the highest degree of fidelity. Further, petitioner denies that she secured or attempted to secure

unwarranted privileges or advantages for herself or Mr. Grosko while acting in her official capacity as Mayor.

In the present context, the statutory word “attempt” ordinarily should mean an intent combined with an act falling short of the thing intended. Proof of intent is difficult, subjective and always a matter of inference. *Lilliston Chrysler v. Universal*, 329 N.J. Super. 318, 324 (App. Div. 2000). A summary judgment motion should not ordinarily be granted when an action or defense requires determination of a state of mind or intent, such as claims of waiver, bad faith, fraud or duress. *Lilliston, supra*, at 324; *Shanley & Fisher, P.C., v. Sisselman*, 516 N.J. Super. 200, 212 (App. Div. 1987) (noting that the court should be particularly hesitant in granting summary judgment where questions dealing with subjective elements such as intent, motivation and duress are involved).

The only way such a state of mind may be delved into and challenged is through direct testimony and cross-examination. *Shanley & Fisher, supra*, at 213. Clearly, where resolution of a disputed fact depends on a credibility determination, summary judgment is foreclosed. *See Pressler, Current N.J. Court Rules, Comment on R. 4:46-2* (2001). Thus, I **CONCLUDE** that respondent has not established that it is entitled to summary decision regarding its allegation that petitioner committed three violations of N.J.S.A. 40A:9-22.5(c). On this prong of the matter, petitioner is entitled to an evidentiary hearing.

It is therefore **ORDERED** that partial summary decision is **GRANTED** to respondent Local Finance Board on its allegation that petitioner’s conduct constituted three violations of N.J.S.A. 40A:9-22.5(d). For these violations, the minimum penalty of \$100. per violation was appropriately assessed. It is further **ORDERED** that summary decision is **DENIED** to respondent regarding its allegation that petitioner committed three violations of N.J.S.A. 40A:9-22.5(c).

This Order may be reviewed by the **LOCAL FINANCE BOARD, DIVISION OF LOCAL GOVERNMENT SERVICES**, either upon interlocutory review pursuant to *N.J.A.C.* 1:1-14.10, or at the end of the contested case, pursuant to *N.J.A.C.* 1:1-18.6.

May 20, 2002

DATE

JOSEPH F. FIDLER, ALJ

INITIAL DECISION

OAL DKT. NO. CFB 2433-00

AGENCY DKT. NO. LFB 97-028

AILEEN BAROW,

Petitioner,

v.

LOCAL FINANCE BOARD,

Respondent.

Carl A. Bergmann, Esq., for petitioner (Wilbert, Montenegro and Thompson, attorneys)

Doreen J. Piligian, Deputy Attorney General, for respondent (David Samson, Attorney General of New Jersey, attorney)

Record Closed: July 26, 2002

Decided: August 8, 2002

BEFORE JOSEPH F. FIDLER, ALJ:

The Local Finance Board charged that petitioner Aileen Barow, while Mayor of Lavallette Borough, was involved in a conflict of interest in violation of the Local Government Ethics Law, *N.J.S.A.* 40A:9-22.1 et seq., because (1) in January 1995, Ms. Barow appointed her boyfriend, Mr. Paul Grosko, who was the Borough's Zoning and Code Enforcement Official, to the Lavallette Borough Planning Board; (2) while serving as Mayor, Ms. Barow became Mr. Grosko's immediate supervisor and maintained and approved his timesheets granting compensation and vacation time to a part-time employee; and (3) in July 1996, Ms. Barow broke a three to three tie and voted to have Mr. Grosko's personnel file expunged of a disciplinary action.

The Board issued a Notice of Violation, alleging the foregoing conduct and determining that Mayor Barow had committed three violations each of *N.J.S.A.* 40A:9-22.5c and -22.5d. Pursuant to *N.J.S.A.* 40A:9-22.10, the Board assessed a civil penalty in the amount of \$100. for each of the violations, for a total of \$600. Ms. Barow requested a hearing and the Board

transmitted the matter to the Office of Administrative Law for determination 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*. Counsel for the Board moved for summary decision, pursuant to *N.J.A.C. 1:1-12.5*, and counsel for Ms. Barow filed papers in opposition to the motion.

N.J.S.A. 40A:9-22.5c and *-22.5d* state that

c. 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;

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;

An Order for Partial Summary Decision was entered on May 20, 2002. As fully set forth in that Order, which I incorporate here by reference, I found that there were sufficient material facts existing without genuine controversy to warrant entry of partial summary decision in the Board's favor as a matter of law. From those essentially undisputed facts, I determined that petitioner's long-term, intimate relationship with Mr. Grosko was a personal involvement as that term should be understood pursuant to *N.J.S.A. 40A:9-22.5(d)*. Since petitioner acted in her official capacity in the three matters described, where her direct personal involvement was of a nature that might reasonably be expected to impair her objectivity or independence of judgment, I concluded that petitioner's conduct constituted three violations of *N.J.S.A. 40A:9-22.5(d)*. The minimum penalty of \$100. per violation was appropriately assessed.

Petitioner was also charged with three violations of *N.J.S.A. 40A:9-22.5(c)*, which provides 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. I determined that this subsection of the Local Government Ethics Law is not violated simply upon the reasonable perception of conflict; it requires an actual showing of state of mind or intent. While petitioner did not dispute the conduct alleged by the Local Finance Board, she asserted that her actions

were advantageous to the best interests of the public and that she exercised her duties with the highest degree of fidelity. Further, petitioner denied that she secured or attempted to secure unwarranted privileges or advantages for herself or Mr. Grosko while acting in her official capacity as Mayor.

As discussed in the Order for Partial Summary Decision, proof of intent is difficult, subjective and always a matter of inference. A summary judgment motion should not ordinarily be granted when an action or defense requires determination of a state of mind or intent; the only way such a state of mind may be delved into and challenged is through direct testimony and cross-examination. Where resolution of a disputed fact depends on a credibility determination, summary judgment is foreclosed. Thus, I concluded that the Board had not established its entitlement to summary decision regarding its allegation that petitioner committed three violations of *N.J.S.A. 40A:9-22.5(c)*, and petitioner was entitled to an evidentiary hearing on this prong.

Petitioner applied to the Board for interlocutory review of the Order for Partial Summary Decision. On July 12, 2002, the Board denied the application. By letter dated July 18, 2002, received July 26, 2002, Senior Deputy Attorney General Daniel P. Reynolds advised on behalf of the Local Finance Board that the Board had determined to withdraw the charges previously asserted against petitioner under *N.J.S.A. 40A:9-22.5(c)*. The Board asked that proceedings before the Office of Administrative Law be concluded and an Initial Decision rendered so that the matter could be returned to the Board to proceed to a final disposition.

In accord with the Board's request, and with no controversy remaining to be adjudicated before the Office of the Administrative Law, this matter will now be returned to the Board. It is so **ORDERED**.

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.

DATE

JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

DATE

LOCAL FINANCE BOARD

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

EXHIBITS

None

WITNESSES

None