

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.

N.J.S.A. 40A:9-22.5(d) and assessing a find of \$250. Respondent now moves for summary decision. PROCEDURAL HISTORY">

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**SUMMARY DECISION**

OAL DKT. NO. [CFB7813-01](#)

AGENCY DKT. NO. 99-014

**LUCY MATIJAKOVICH,**

Petitioner,

v.

**LOCAL FINANCE BOARD,**

Respondent.

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**Edward J. Bowen**, Esq., for petitioner

**Ronald V. Smith**, Deputy Attorney General, for respondent

(David Samson, Attorney General of New Jersey, attorney)

Record Closed: August 10, 2002 Decided: September 24, 2002

BEFORE **RICHARD McGILL**, ALJ:

This matter concerns a Notice of Violation issued by the Local Finance Board (respondent) to Lucy Matijakovich (petitioner), a councilwoman of the City of Garfield, alleging that she participated during council discussions of a police reorganization on May 12, 1998, and November 15, 1999, and that she voted on November 15, 1999, for Resolution No. 99-379 endorsing a police department reorganization in violation of [N.J.S.A. 40A:9-22.5\(d\)](#) and assessing a fine of \$250. Respondent now moves for summary decision.

### PROCEDURAL HISTORY

Respondent issued the Notice of Violation on August 9, 2000, and petitioner requested a hearing by letter dated July 6, 2001. The matter was transmitted to the Office of Administrative Law on September 19, 2001, for determination as a contested case.

On June 18, 2002, respondent filed a motion for summary decision. Petitioner submitted a response on July 22, 2002, and no reply was received from respondent.

### MOTION FOR SUMMARY DECISION

a. **Positions of the Parties**

Respondent contends that as a councilwoman of the City of Garfield, petitioner voted on a resolution endorsing a reorganization of the municipal police department which would result in the promotion of her son, Glenn Mati, from the position of lieutenant to captain in violation of [N.J.S.A. 40A:9-22.5\(d\)](#). In support of the motion for summary decision, respondent makes factual assertions as follows:

1. Petitioner was a Councilwoman for the City of Garfield during the time frame of the relevant complaint.
2. It was alleged that during a closed Council session on May 12, 1998, petitioner participated in a discussion pertaining to the reorganization of the Garfield Police Department where her son, Glenn Mati, was a policeman.
3. It was further alleged that on November 15, 1999, she also voted on Resolution No. 99-379 which supported the city Manager's decision to reorganize the department, which if implemented, would result in petitioner's son, Glenn Mati, being promoted from a lieutenant to a captain.
4. Petitioner does not dispute participating in this discussion and voting on Resolution No. 99-379, but responded through her counsel that the township attorney had advised that the vote was not binding and that she was not prohibited from participating in the discussion.
5. The transcript of the closed session does not support that position. While the attorney did advise petitioner that the issue was a non-binding issue, he specifically spelled out that he thought petitioner should not participate.
6. It was equally clear from comments of other participants that petitioner should not participate because it affected her.
7. Newspaper reports also chronologize petitioner's efforts to get the reorganization plan's approval.

In a certification submitted in opposition to the motion for summary decision, petitioner makes three main points. First, the resolution had no binding effect on the city manager. Second, the municipal attorney, Joseph Rotolo, gave conflicting advice. According to petitioner, there is a conflict in advice that petitioner should not participate because the reorganization would affect her son and that the matter did not require a formal vote by the council. Third, the law only prohibits petitioner from acting in matters over which she has some legal authority or would have some binding effect. According to petitioner, the resolution was of no legal effect since the council did not have the authority to take the action under consideration in regard to the police department.

## b. Legal Standard

A motion for summary decision should be granted where there is no genuine issue as to any material fact and the moving party is entitled to prevail as a matter of law. *N.J.A.C.* 1:1-12.5(b). The same standard is applied in the courts of this State pursuant to *R.* 4:46-2. Summary judgment “is designed to provide a prompt, businesslike and inexpensive method” to dispose of actions which do not present any genuine issue of material fact. *Judson v. Peoples Bank & Trust Co. of Westfield*, [17 N.J. 67](#), 74 (1954). The movant must show that there is no genuine issue of material fact, and all inferences of doubt are drawn against the movant. *Id.* at 74-75. However, excessive caution which would undercut the purposes of a motion for summary judgment should be avoided. *Pierce v. Ortho Pharmaceutical Corp.*, [84 N.J. 58](#), 65 (1980). Thus, if the opposing party offers only facts which are immaterial or insubstantial in nature, these circumstances should not defeat a motion for summary judgment. *Judson v. Peoples Bank & Trust Co. of Westfield*, 17 *N.J.* at 75. Although the pleadings may raise a factual issue, summary judgment procedure pierces the allegations in the pleadings, where the other papers show the absence of any genuine issue of material fact. *Ibid.*

In determining whether there exists a genuine issue as to a material fact, the judge must “consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.” *Brill v. Guardian Life Ins. Co. of America*, [142 N.J. 520](#), 523 (1995).

## c. Facts

After a careful review of the submissions of the parties, I am satisfied that there is no genuine issue of material fact in this matter. Petitioner's assertion that the municipal attorney gave conflicting advice is actually a reflection of a legal contention rather than a factual issue. The facts in this matter are as follows:

1. Petitioner was a councilwoman of the City of Garfield during the time frame relevant to the complaint including May 12, 1998, and November 15, 1999.
2. During a closed council session on May 12, 1998, petitioner participated in a discussion pertaining to a reorganization of the Garfield Police Department where her son, Glenn Mati, was a policeman.
3. On November 15, 1999, petitioner voted on Resolution No. 99-379, which supported the city manager's decision to reorganize the department, which if implemented, would result in petitioner's son, Glenn Mati, being promoted from lieutenant to captain.
4. The municipal attorney gave advise that the reorganization of the police department did not require a formal vote by the mayor and council.
5. The municipal attorney specifically advised petitioner that she should not participate in the discussion of the reorganization or vote on the resolution.
6. Other council members took the position that petitioner should not participate in the discussion of the reorganization or vote on the resolution.

#### d. Law and Analysis

The applicable statute is [N.J.S.A. 40A:9-22.5\(d\)](#), which provides in pertinent part as follows:

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

Petitioner does not dispute that she is a government officer or that her son, Glenn Mati, is a member of her immediate

family within the meaning of [N.J.S.A. 40A:9-22.5\(d\)](#). Likewise, petitioner does not dispute that her son has a direct or indirect financial or personal involvement in the question of promotions that might reasonably be expected to impair her objectivity or independence of judgment. Further, there is no dispute concerning petitioner's assertions that the municipal attorney advised her both that she should not participate in the discussion and vote related to the reorganization of the police department and that the mayor and council had no formal role in approving the restructuring.

Petitioner's assertion that the municipal attorney gave conflicting advice is based on the notion that petitioner was prohibited by [N.J.S.A. 40A:9-22.5\(d\)](#) only from acting in matters over which she had some legal authority or which would have some binding effect. The substance of petitioner's position is that she did not "act" within the meaning of [N.J.S.A. 40A:9-22.5\(d\)](#).

Petitioner's argument is unpersuasive. A municipality may exercise its delegated powers through either an ordinance or a resolution. *Inganamort v. Borough of Fort Lee*, 72 N.J. 412, 417 (1997). A resolution may be nothing more than an expression of opinion. *Id.* at 418. Thus, a municipality may act simply by expressing its opinion through a resolution.

In the context of this case, it is evident that petitioner specifically intended to use her office to effect an outcome with respect to promotions that would benefit her son. It follows that petitioner did "act" within the meaning of [N.J.S.A. 40A:9-22.5\(d\)](#), when she advocated and voted for a resolution in which her son had an interest. Therefore, I **CONCLUDE** that petitioner violated [N.J.S.A. 40A:9-22.5\(d\)](#) by participating in a discussion and voting on a resolution related to a reorganization of the police department that would result in a promotion for her son.

The fine for a violation of [N.J.S.A. 40A:9-22.5\(d\)](#) is not less than \$100 or more than \$500. The appropriateness of the amount of the fine of \$250 is not in dispute and appears to be reasonable. Therefore, I **CONCLUDE** that the fine

should be \$250.

Accordingly, it is **ORDERED** that:

1. The motion for summary decision in this matter is granted.
2. The charge of a violation of [N.J.S.A. 40A:9-22.5\(d\)](#) is sustained.
3. The fine is \$250.

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 **RICHARD McGill**, ALJ

Receipt Acknowledged:

DATE LOCAL FINANCE BOARD

Mailed to Parties:

DATE OFFICE OF ADMINISTRATIVE LAW

OAL DKT. NO. [CFB7813-01](#)

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