

## Local Government Ethics Law

### Opinions of the Office of the Attorney General

Subject: **Board of Recreation Commissioners as "Local Government Officers"**

The following is the full text of advice issued by the Office of the Attorney General and received by the Local Finance Board. The content is a verbatim reproduction of the document received by the Board. It has been reformatted to make it accessible to the public through the Board's web site.

\* \* \*

November 1, 1991

Barry Skokowski, Sr.  
Deputy Commissioner  
Department of Community Affairs  
CN 800  
Trenton, New Jersey 08625-0800

Re: 91-0132: Board of Recreation Commissioners  
as "Local Government Officers" pursuant to  
the Local Government Ethics Law

Dear Deputy Commissioner Skokowski:

You have requested advice as to whether the members of a Board of Recreation Commissioners, established pursuant to N.J.S.A. 40:12-1 et seq., are "local government officers" pursuant to the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq. For the below stated reasons you are advised that the members of a Board of Recreation Commissioners are "local government officers" pursuant to the Local Government Ethics Law and therefore subject to its terms, Particularly the requirement of filing a financial disclosure statement.

In Attorney General Opinion No. 91-0093 (September 20, 1991) we provided a general overview of the legislative history and purpose of the Local Government Ethics Law, the general scope of local government agencies and local government officials that were subject to the new Law. Essentially, the purpose of the Law is to provide a State-wide ethical code applicable to persons who serve in local government and to require "local government officers" to file annual financial disclosure statements. Generally, all local

government agencies, except purely advisory bodies and school boards, are within the Scope of the Law. N.J.S.A. 40A:9-22.3(e). Further, the term "local government officer" was intended, in part, to identify those individuals serving in local government who exercise a high level of authority and independent judgment which directly affects the policy and purposes of the agency and who have a detailed knowledge of the agency's confidential labor relations matters. N.J.S.A. 40A:9-22.3(g), see also Attorney General Opinion No. 91-0093 (September 20, 1991).

A Board of Recreation Commissioners is established pursuant to N.J.S.A. 40:12-1 et seq. The Board may be established by either a municipality or county. N.J.S.A. 40:12-1. The members of the Board are appointed by the municipal mayor or chief executive officer or the county freeholders. Ibid. The Board is a part of the municipality or county which created it. Board of Recreation of Rutherford v. Rutherford, 166 N.J. Super. 476, 482 (App. Div. 1979). The Board has broad authority regarding municipal or county places of recreation. This authority includes the powers to acquire property for recreational use, N.J.S.A. 40:12-3; to control the use of places of recreation, N.J.S.A. 40:12-6; to establish rules for the use of places of recreation, Ibid.; to regulate the conduct of persons who use places of recreation, Ibid.; and to appoint and fix the salaries of a recreation director, custodians, supervisors, and assistants. Ibid. While the Board exercises considerable powers, it does not operate or act independently of the municipality or the county. Rather, the Board essentially acts as a department of the municipality or county. Board of Recreation Commissioners of Rutherford v. Rutherford, 166 N.J. Super. at 481. Thus, a Board of Recreation Commissioners is a "local government agency" pursuant 'to the Local Government - Ethics Law. N.J.S.A. 40A:9-22.3(e).

Having concluded that the Board is a "local government agency", the next inquiry is whether the Board members are "local government officers." Included as "local government officers" are 1) elected officials; 2) members of local bodies that have authority to enact ordinances, approve development applications, or grant zoning variances; 3) members of independent local authorities; and 4) persons who are "managerial executives" or "confidential employees." N.J.S.A. 40A:9-22.3(g). The members of the Board of Recreation Commissioners are not within the first three classes of local government officers.

In Attorney General Opinion No. 91-0093 (September 20, 1991) we examined in detail the fourth category of "local

government officers." Essentially a "managerial executive" is a person who formulates management policies or who is charged with the responsibilities of directing the effectuation of management policy. In contrast a "confidential employee" is an individual which has access to confidential information of the employer which is relevant to the labor relations of the local government agency. We noted in the opinion, that the Legislature in using these terms to define "local government officer" was attempting to adopt an approach that would identify persons of a high level with policy making responsibilities. To a large extent the determination of whether an individual is a "managerial executive" or "confidential employee" is often very individualized. However, in the opinion we found that certain persons serving in local government were necessarily "managerial executives" or "confidential employees", because their statutory duties mandated that they exercise significant policy making responsibilities. These individuals included among others, a county prosecutor, a county sheriff, a municipal attorney, and the members of Board of Trustees of a county college, a municipal library, and a county regional library. In examining the statutory duties of a Board of Recreation Commissioners discussed above, the Board exercise significant policy making responsibilities in the specialized area of the use and control of the recreation lands of the municipality or county and it is also directly involved in the labor relations matters as it concerns recreation personnel. Accordingly, the members of the Board of Recreation Commissioners are necessarily "managerial executives" and "confidential employees" for purposes of the Local Government Ethics Law.

It should be noted that it is common for a municipality or county to establish a committee or other body to advise the governing body on recreational issues. These bodies may be referred to as Recreation Commissions or Committees. As to whether the members of these various bodies are "local government officers" requires an individualized legal and factual determination detailed in Attorney General Opinion No. 91-0093 (September 20, 1991). The instant opinion is limited to the Boards of Recreation Commissioners established pursuant to N.J.S.A. 40:12-1 et seq. and it is not intended to address the variety of commissions, committees, and other bodies created by a local governing body to address recreational issues.

For the foregoing reasons you are advised that a Board of Recreation Commissioners, established pursuant to N.J.S.A. 40:12-1 et seq., is a "local government agency" for purposes of the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq., that the members of the Board are "local government officers" for purposes

of the Law and, therefore, must file a financial disclosure statement.

Very truly yours,

ROBERT J. DEL TUFO  
ATTORNEY GENERAL

By: \_\_\_\_\_  
John J. Chernoski  
Senior Deputy Attorney General