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Distribution

Municipal Clerks

County Clerks

Local Ethics Board Secretaries

Regional Authority Board
 Secretaries

County College Presidents

Local Finance Notice

Chris Christie
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 Director

Local Government Ethics Law 2011 Financial Disclosure Statements

Introduction

The Local Government Ethics Law requires the annual filing of a Financial Disclosure Statement (FDS) by local government officers. This Notice outlines procedures for those officials charged with distributing and collecting forms from covered individuals. It should be carefully reviewed by all local officials involved in the filing process.

All local government officers serving a local government during any portion of the calendar year are required to file a statement for that year. The Local Finance Board ("Board") promulgated the enclosed Financial Disclosure Statement form for the use by all local government officers. The form is also available as a downloadable PDF "[fill-in](#)" form.

As the local official charged with the responsibility of distributing and collecting forms, this Notice also serves to alert you to a change in the Board's policy concerning non-filing by local government officers. Please share the following new policy with your local government officers.

In the past, upon submission of a signed written complaint against a local government officer alleging non-filing or inadequate disclosure on a filed FDS, the Board's policy was to provide the accused with one opportunity to file or correct the filing. Upon submission of the late or corrected filing, the Board dismissed the complaint.

In the future, upon receipt of a complaint of this nature it is the Board's intention to authorize Board staff to initiate an investigation. The local government officer will be given an opportunity to file the FDS and to provide an explanation as to the reason for the late or incomplete filing. The Board will then review the explanation and circumstances. Unless good cause is shown for the lack of a timely and complete filing, the Board will determine the matter to be a violation and will assess a fine in the minimum amount of \$100 pursuant to N.J.S.A. 40A:9-22.10.

Please be reminded that ignorance of the requirement to file the FDS is not considered "good cause." It is anticipated that local government officers will take their position seriously and will also take the filing of the FDS seriously. Your continued assistance with the creation and submission of the Roster will assist greatly in the Board's effort to gain state-wide filing compliance.

Review of Rosters

The Board is requesting each clerk/agency secretary review their Roster of Local Government Officers required to file the FDS in conjunction with the information in the next section of this Notice. For further guidance, the [Attorney General Opinions](#) on the Board's web site and consultation with legal advisors can help confirm whether specific position titles are required to file.

If, after review, it is determined that some positions within the local government are not deemed to be local government officers and therefore not required to file an FDS, please update/revise the Roster and notify those individuals of your determination. If there are position titles on the Roster that appear inconsistent with the filing requirements, the Board will require an explanation as to how they are deemed LGOs and thus required to file an FDS.

Determining Local Government Officers Required to File

While the Ethics Law applies to all employees and officers of local governments, only local government officers are required to file a financial disclosure statement. [N.J.S.A. 40A: 9-22.3g](#) defines a local government officer as:

... any person, whether compensated or not, whether part-time or full-time:

- (1) elected to any office of a local government agency;
- (2) serving on a local government agency, which has the authority to enact ordinances, approve development applications or grant zoning variances;
- (3) who is a member of an independent municipal, county or regional authority; or
- (4) who is a managerial executive or confidential employee of a local government agency, as defined in Section 3 of the "New Jersey Employer-Employee Relations Act," P.L. 1941, c.100 (C.34: 13A-3), but shall not mean any employee of a school district or member of a school board.

The Office of the Attorney General has issued a series of opinions that give advice as to the type of positions that are considered "local government officers." These opinions may be viewed on the Division of Local Government Services' web site www.nj.gov/dca/lgs. Click on [Ethics Law and Complaints/Ethics Related Opinions](#) to view these opinions.

Neither the Board, nor the Attorney General's Office can examine every local position or body in the State that is created by ordinance and determine whether or not it is subject to filing requirements. These determinations, to a large extent, are fact sensitive and must be determined on a case-by-case basis by each local government. It is recommended that clerks/agency secretaries consult with the local attorney to make the determinations.

As noted above, each clerk and/or agency secretary is asked to review their Roster of Local Government Officers to determine the individuals in their organization that are required to file an FDS. To assist in the review, the following information, extracted from the Attorney General Opinions provides specific guidance on various positions.

Positions Specifically Required to File an FDS

The following positions are specifically **required** to file the FDS (listed in opinion number order):

- AO 91-0090: County Prosecutor
- AO 91-0092: Municipal Attorney
- AO 91-0093:

- Elected Officials (and any person selected to fill a vacancy in an elected position.)
- Board of Health Members
- Planning Board Members
- Board of Adjustment Members
- Zoning Board of Adjustment Members
- Independent Authority Members
- Fire District Commissioners
- Special Tax District Commissioners
- AO 91-0132: Board of Recreation Commissioners
- AO 91-0133: Planning/Zoning Board Attorney
- AO 91-0134: Independent Local Government Agency Attorney
- AO 92-0061: Local Ethics Board Members
- AO 92-0069: Rent Leveling Board Members
- AO 92-0072: Joint Insurance Fund Commissioners
- AO 92-0109: County and Municipal Emergency Management Coordinators
- AO 00-0041: County Agricultural Development Board Members

Positions Specifically NOT Required to File an FDS

Attorney General Opinions have been issued determining that the following are specifically **not required** to file the FDS (listed in opinion number order):

- AO 91-0096: Court Personnel – Including Judges and Court Administrators
- AO 91-0141: County Board of Taxation Commissioners
- AO 92-0070: Local Assistance Board Members
- AO 92-0071: Municipal Environmental Commission Members
- AO 92-0109: Emergency Management Council Members
- AO 95-0168:
 - County/Local Advisory Committee on Alcoholism and Drug Abuse Members
 - County Alliance Steering Subcommittee Members
 - Municipal Alliance Committee Members
- AO 97-0135: Registered Municipal Accountants Serving as Local Government Auditors

In addition, while Board of Elections Members/County Superintendent of Elections are not covered under the Local Government Ethics Law, they are covered by the State Ethics Commission.

Managerial Executive and/or Confidential Employees

The determination regarding **managerial executive and/or confidential employees** is fact sensitive. [Attorney General Opinion #91-0093](#) provides a six page analysis of how such determinations have been made by the Public Employment Relations Commission (PERC) in interpreting the NJ Employer-Employee Relations Act which is tied to the Local Government Ethics Law at N.J.S.A. 40A:9-22.3g(4). Please review this opinion to make determinations locally for these categories. If a local government employee's title is covered by a bargaining unit, most likely, that person would not be required to file an FDS.

As general guidance, please also note that the opinion points out the **following have been deemed by PERC as managerial executive and/or confidential employees** in at least one local government:

Municipal Clerk	Deputy Municipal Clerk
Police Chief	*Deputy Police Chief
*Police Captain	Public Works Superintendent
Assistant County Treasurer	Health Officer
Treasurer	Fire Chief
*Deputy Fire Chief	Library Board Trustees
Board of Trustees of County College	Administrative Assistants (Confidential)
Secretary (Confidential)	Assistant County Attorney

Additionally, the following have been deemed by PERC as **not managerial executive and/or confidential employees** in at least one local government:

Construction Official	Fire Marshal
Fire Inspector	*Deputy Police Chief
*Deputy Fire Chief	*Police Captain
Police Sergeant	Assistant Engineer
Lifeguard Captain	Zoning Officer
Tax Assessor	Library Director
Deputy Warden	Tax Collector
Assistant Tax Collector	

* listed in both categories

As can be seen from these Attorney General Opinions, PERC has taken a different position on the same title in different local governments. Local governments are asked to make a thorough analysis of the titles of positions they have deemed to be local government officers. Please review those individuals you deem required to file the FDS against the various Attorney General Opinions to ensure that only those positions required to file are included on your Roster.

Common Misunderstandings

For a variety of reasons found in the Local Government Ethics Law and in the Attorney General Opinions, there are positions that are not required to file the FDS. Please note that the Local Finance Board will not pursue the non-filing of those positions not required to be filing even if the local government includes such a position on the roster. They include:

- Advisory Board Members
- Court Personnel
- Registered Municipal Accountants
- Bond Counsel
- Labor Counsel

If, after review, it is determined that some positions within the local government are not deemed to be local government officers and therefore not required to file an Annual Financial Disclosure Statement, please update/revise the roster and notify those individuals of your determination. If there are position titles on the roster that appear inconsistent with the filing requirements, the Board will require an explanation as to how the positions are deemed LGOs and thus required to file an FDS.

Failure to file the Annual Financial Disclosure Statement is a violation of the Local Government Ethics Law. Under the provisions of the Law, N.J.S.A. 40A: 9-22.10, local government officers are subject to fines of up to \$500 for each violation of the statute.

Distribution of Financial Disclosure Statement Forms

Municipal and County Clerks are responsible for transmitting the Financial Disclosure Statement forms to local government officers, in accordance with N.J.S.A. 40A: 9-22.6. For purposes of this statute, officers and employees serving independent local authorities are deemed to be serving the local government.

In Attorney General Opinion #91-0093, the Office of the Attorney General has determined that the term "independent authorities" encompasses most autonomous local authorities and special tax districts. This includes fire districts. Thus, the clerk also makes distribution to independent local authorities and fire districts.

However, for a municipality or county that has established an ethics board, the forms will be transmitted to that local ethics board for distribution. In such instances, local ethics boards are required to make the forms available to local government officers within their jurisdiction. Once the Board is aware of the establishment of a local board, future correspondence will be sent directly to them. Therefore, please keep the Board apprised of the status of a local ethics board.

Where Local Government Officers File

In order to facilitate filing with the Board, local government clerks and local ethics board secretaries must periodically forward all copies of forms which are filed with their office to the Board. The form instructs the filer to provide the clerk with two signed copies of their completed form. When these are received, please retain the original for your file and forward the original signed copy to the Board. It would also be helpful if you could forward them in batches weekly, rather than as the individual forms are submitted.

Instruct municipal/county local government officers to file the financial disclosure statement forms with your office. This includes local authority and fire district officers.

In counties or municipalities that have established local ethics boards, a copy of the statement shall also be filed with the ethics board having jurisdiction over the local government officer.

Regional authorities and county colleges should designate a person to serve as the holder of public records, who can coordinate the filing for their entity in the manner previously described, including retaining the original file for public access.

Clerks, local ethics board secretaries, regional authority designees, and county college designees are to forward copies of the forms received to:

**Chairperson
Local Finance Board
P.O. Box 803
Trenton, New Jersey 08625-0803**

Filing Status

Finally, once the filing deadline has passed, a roster must be sent to the Board containing the following information:

Name of each person deemed to be a local government officer
Title/agency served
Filing status

This information is vital to the Board's effective administration of the Local Government Ethics Law. Refusal to file a Financial Disclosure Statement is a violation of the Law, and the Board is prepared to take the necessary action to bring officers into compliance.

The [roster](#) form includes sections for each category of officer or employee that may be required to file. **It is imperative that the roster be completed in every category in accordance with your specific local government agency's information.** The roster is not to be considered as a transmittal cover sheet; rather, it is a complete list of local government officials required to file the Financial Disclosure Statement. Please return the completed roster form by June 1, 2011.

For your convenience, the Division also created the rosters as an Excel workbook to simplify data entry. The [workbook rosters](#) are found on our website. Please note that each category is shown as a separate worksheet, with the tabs at the bottom of the workbook. Additionally, you must print the entire workbook in order to print the entire roster. Use of the worksheet is not mandatory; it is an option that can be used in lieu of the Word document.

Other Information

Statement available at Web site: The [Financial Disclosure Statement form](#) may be downloaded from the Ethics section of the Division of Local Government Services' web site www.nj.gov/dca/lgs. The form is an Adobe Acrobat form that can also be filled in using a computer, then printed for signature and mailing. Adobe Acrobat Version 8.0 or higher will permit the form to be saved. The form cannot be submitted electronically as it requires an original signature.

County Colleges: Officers and employees of the county colleges are under the jurisdiction of the Local Finance Board (Board) in the Division of Local Government Services, Department of Community Affairs, for the purposes of compliance with the provisions of the Local Government Ethics Law.

The Board is distributing blank copies of the Financial Disclosure Statements to the office of the president of the county colleges who should, in turn, transmit forms to county college local government officers, in accordance with N.J.S.A. 40A:9-22.6. All copies of forms that are filed with their office should be submitted to the Board periodically. County colleges should retain the original for their file and forward the original signed copy to the Board as previously described.

Filing Deadline: ON or BEFORE APRIL 30

N.J.S.A. 40A:9-22.6b requires that "... statements shall be filed on or before April 30th each year, except that each local government officer shall file a financial disclosure statement within 30 days of taking office." For example, if an officer takes office on November 1, 2011, that officer shall file a 2011 Financial Disclosure Statement by December 1, 2011. The officer supplies the required

information in Section II of the form that is based on the previous calendar year, 2010, even though the officer did not serve during 2010.

Year: The filing year is the year in which you serve, thus **2011** should be indicated above Section I on the form.

Public Records: Financial Disclosure Statements are considered public records.

Questions: Please e-mail us at dlgs@dca.state.nj.us or call (609) 292-0479. If no one is available to answer your call, please leave a message on the answering machine. Due to the heavy volume of inquiries, we may be unable to immediately answer all calls; however, staff will return calls as soon as possible.

Approved: Thomas H. Neff, Director

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2	Ethics Law and Complaints/Ethics Related Opinions	http://www.nj.gov/dca/lgs/ethics/ag_opinions_toc.shtml
3	Attorney General Opinion #91-0093	http://www.nj.gov/dca/lgs/ethics/ag_opinions/91-0093.shtml
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