



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

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Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

January 29, 2013

Dr. Michael Cali, Chairperson
Marlboro Township Ethics Board
P.O. Box 372
Marlboro, New Jersey 07746

Re: Appeal of Local Board Decision
MTEB Complaint 0001-2011
LFB Complaint 12-060

Dear Dr. Cali:

The purpose of this letter is to inform you of Local Finance Board (Board) action on the above referenced appeal of the findings of the Marlboro Township Ethics Board (MTEB) regarding whether Township of Marlboro Councilwoman Randi Marder "accepted tens of thousands of dollars in "no bid" business from the Township of Marlboro and funneled it to Inkwell Global Marking Corporation, a company she and her husband run and manage".

In accordance with N.J.S.A. 40A:9-22.7, the Board has the power:

- c. **To hear and determine any appeal of a decision made by a county or municipal ethics board.**

The Local Finance Board, upon review of the factual and legal conclusions made by the Marlboro Township Ethics Board, upholds in part and remands in part the MTEB decision in MTEB complaint 0001-2011/LFB Complaint 12-060 for additional investigation and application of the law consistent with the Local Finance Board's guidance as set forth in public advisory opinion 92-014.

In Advisory Opinion 92-014, the Board considered two questions that relate to the issue at hand. The questions considered were whether the spouse of a local government officer who is



an elected official may do business with the municipality under one or two conditions: (1) The local government officer does not vote or take part in ordering; and (2) formal bids or informal quotes as appropriate are obtained with the local government officer abstaining from any action concerning vouchers involving the business. Information provided by the opinion requestor indicates that the purchases would not be subject to public bidding requirements. The Board opined that informal quotation processes “may be manipulated very easily”, and “such an informal process may not occur in full public view under the Sunshine Law, since it may not require a formal award by the governing body. “A member of the governing body may wield influence... even through the open competitive process”. The Board further stated that there is an aura of influence the local government officer may hold over the other members of the governing body or the appearance of impropriety on the part of the local government officer whose spouse submits a bid to a municipality. The Board concluded that the spouse of an elected official conducting business with the same municipality is an activity that should be avoided. “Any appearance of impropriety or tacit influence on others by an elected official impugns the standards set forth in the Local Government Ethics Law.” (See attached Advisory Opinion LFB#92-014)

The MTEB made three determinations at its July 11, 2012 meeting.

1. That Randi Marder did not violate the Township Ethics Code “simply because Inkwell continued to do business with the Township following Councilwoman Marder’s election.”
2. Township Mayor Jonathan Hornik and Councilman Frank LaRocca were appropriately excluded from the review of this matter because the complainant did not file the necessary form to include them as accused.
3. The Township Board of Ethics was the appropriate venue for original jurisdiction.

On August 10, 2012 the Board received an appeal from Christopher Dean. Mr. Dean raised the following issues on appeal:

1. The Marlboro Township Ethics Board erred when it failed to add Mayor Jonathan Hornik and Councilman Frank LaRocca to the Complaint, and investigate their involvement in the matter. Complainant-Appellant timely amended his Complaint by filing a clarification letter on February 7, 2012, two days before the MTEB took jurisdiction over the Complaint.
2. The MTEB did not consider all relevant evidence, and did not fulfill their proper investigative role as required by law.

3. The MTEB erred in its legal determinations and findings of fact.
4. The MTEB is not properly constituted under the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq.
5. The MTEB suffered from pervasive and ongoing conflicts of interest that affected their ability to conduct an objective investigation as required by law, and make objective findings of fact.
6. MTEB did not allow the Complainant-Appellant to participate in the proceedings in any meaningful way or to observe the proceedings. This procedure lacked transparency and was a departure from the procedure used by the MTEB in at least one prior MTEB investigation.
7. One or more members of the MTEB engaged in inappropriate ex parte communication with Mayor Hornik on at least one occasion.

The MTEB submitted the complete file upon which it based its findings in a package dated September 14, 2012 when notified of the appeal, and added that package on September 17, 2012 with the minutes from the June 13, 2012 meeting of the MTEB. The MTEB submitted the annual Financial Disclosure Statements previously filed by Councilwoman Marder for 2008, 2009, 2010, 2011 and 2012, to the Local Finance Board. The Board reviewed its files for these same statements. The Board requested the following information from the Township of Marlboro to supplement its review:

- Any resolution(s) authorizing a contract with Inkwell Global Marketing Corporation from 2008 to present, including the terms of the contract and a certified vote of the Council, and
- Any quotes for the services secured by the Borough with Inkwell Global Marketing Corporation from 2008 to present, and
- The certified minutes from any meeting where payment to Inkwell Global Marketing Corporation was authorized from 2008 to present, and
- Any invoices, vouchers, or requests for payments submitted by Inkwell Global Marketing Corporation from 2008 to present, and
- All payments made to Inkwell Global Marketing Corporation from 2008 to present.

A response was received on October 10, 2012. The Board further requested and received Resolutions #2008-36, #2009-38, #2010-39, #2011-39, and #2012-40 from the Township of Marlboro.

Based on the information supplied, it is the Board's understanding that Randi Marder was elected to the Marlboro Township Council in 2008. She is married to Steven Marder. On the Financial Disclosure Statements submitted by Ms. Marder from 2008 through 2012, she lists Inkwel Global Marketing as a source of income in excess of \$2,000 for her husband (2008-2012) and herself (2012). She does not indicate in Section IID that either she or her husband has an interest¹ in Inkwel Global Marketing. The Financial Disclosure does list an interest in an entity called Abbierose Realty, LLC. The MTEB investigation included the Township's association with Inkwel Global Marketing and an affiliated company named Lenny's Trophies. Lenny's Trophies is not listed on any of the FDS filed by Ms. Marder.

In a sworn affidavit given to the MTEB, Ms. Marder attested "[Inkwel] is and was always owned by my husband and his family, and has been in business since 1986." **This quote would appear to be inconsistent with the information provided in her FDS from 2008 through 2012, because, as noted above, she does not disclose any ownership interests of Inkwel for herself or her husband.**

Since at least 2008, the Township council has annually passed a resolution allowing the designated purchasing agent to award contracts up to the bid threshold without going through the public bidding process and without prior approval of the Township council. These resolutions have passed unanimously each year, and are passed pursuant to N.J.S.A. 40A:11-3. Councilwoman Marder seconded and voted in favor of the 2008 resolution, 2008-36. She voted in favor of the 2009 resolution, 2009-38. In 2010, Councilwoman Marder voted in favor of 2010-39. In 2011, as Council President, Ms. Marder voted in favor and signed the resolution (2011-39). In 2012, she offered the resolution and voted in favor of it (2012-40). The bid threshold is an aggregate amount to a specific vendor in that year. The bid threshold is \$17,500.

From 2008 through 2011, the Township of Marlboro paid Inkwel Global Marketing an aggregate amount of \$18,825. From 2008 through 2011, the Township of Marlboro paid Lenny's Trophies \$24,879.35. These payments for goods and services did not exceed the minimum bid threshold in any one given year, and review of the procedures followed to award the work to the companies indicates that provisions of the Local Public Contracting Law were followed.

The Township's Code of Ethics is substantially similar to the Local Government Ethics Law (LGEL). Its Ethics Board operates with a code deemed approved by the Local Finance Board. The MTEB specifically investigated violations of Section B(1), Section B(2), Section

¹ N.J.S.A. 40A:9-22.3(d) defines "interest" as "the ownership or control of more than 10% of the profits, assets or stock of a business organization but shall not include the control of assets in a nonprofit entity or labor union."

B(3), Section and B(4) of the Marlboro code. These sections parallel N.J.S.A. 40A:9-22.5(a), (c), (d), and (e).

The MTEB also reviewed Section B(9) of the Marlboro Code, which states "No officer or employee elected or appointed in the Township shall approve or disapprove or in any way recommend the payment of any bill, voucher or indebtedness owed or allegedly owed by the Township in which he or she has a direct or indirect personal, pecuniary or private interest." There is no parallel provision in the LGEL.

The Marlboro code has a more expansive definition of "members of his or her family" than the LGEL. In Marlboro, the phrase means "the parent(s), siblings, spouse, partner, children or in-laws of an officer or employee."

LOCAL FINANCE BOARD ACTION

Upon review of the facts and circumstances presented in this appeal, the Local Finance Board upholds the findings of the MTEB with regard to finding #2, that Township Mayor Jonathan Hornik and Councilman Frank La Rocca were appropriately excluded from the review of this matter because the complainant did not file the necessary form to include them as accused, and MTEB finding #3, that the Township Board of Ethics was the appropriate venue for original jurisdiction to hear this complaint.

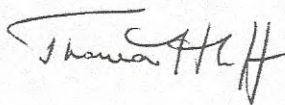
The MTEB was correct to exempt the Mayor and Councilman from their review of this matter since the process set by the MTEB requires the submission of the complaint on a form. The original complaint filed by Mr. Dean against Councilwoman Marder was submitted on the proper form and Mr. Dean is not precluded from submitting a complaint on the form at a future date.

The MTEB acted correctly in assuming jurisdiction over this complaint pursuant to the New Jersey Administrative Code, N.J.A.C. 5:35-1.3.

Additionally, in furtherance of the concerns raised in Mr. Dean's appeal, the Board remands for additional investigation and application of the appropriate legal standard, the question of whether Councilwoman Marder violated the Financial Disclosure Statement filing requirement as defined by N.J.S.A. 40A:9-22.6 of the Local Government Ethics Law and Section VI of the Marlboro Township Ethics Board Code of Ethics. As noted earlier, Advisory Opinion 92-014 provides the legal standard appropriate for the underlying concern of conflicts where a member of a governing body's spouse has a business in a municipality. The matter is remanded for consideration of this standard. If a relationship exists that should have been disclosed, the MTEB should apply the proper legal standard to Councilwoman Marder's relationship to Inkwell and the award of work to Inkwell by the Township.

Please contact the Local Finance Board if you have any questions regarding this determination at (609) 292-0479.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas H. Neff". The signature is stylized with a large, sweeping initial "T" and "H".

Thomas H. Neff, Chair
Local Finance Board

C: Appellant
Enclosure
THN:nb
C12-060.Remand