State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER

OAL DKT. NOS. CFB 01524-15 and
CFB 18892-15

AGENCY NOS. LFB #12-090/#13-011

WILLIAM BUDESHEIM,

Petitioner,

v.

LOCAL FINANCE BOARD,

Respondent.

____

Anthony P. Seijas, Esq., for petitioner (Cleary, Giacobbe, Alfieri, Jacobs, attorneys)

Melanie R. Walter, Deputy Attorney General, for respondent (Robert Lougy, Acting Attorney General of New Jersey, attorney)

BEFORE **MICHAEL ANTONIEWICZ**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Respondent, Local Finance Board (respondent or LFB) asserts that petitioner acted in an official capacity in a matter where a disqualifying interest existed and thereby violated N.J.S.A. 40A:9-22.5(d). In addition, the respondent found that petitioner violated N.J.S.A. 40A:9-22.5(c) for securing unwarranted privileges or

advantages. Petitioner, William Budesheim (petitioner or Budesheim), is the Mayor of the Borough of Riverdale. On December 12, 2014, the LFB issued a Notice of Violation finding that petitioner violated N.J.S.A. 40A:9-22.5(c) and (d). The LFB assessed three fines of $250 for each count of violating N.J.S.A. 40A:9-22.5(d) and a fine of $500 for the violation of N.J.S.A. 40A:9-22.5(c).

Petitioner requested an administrative hearing and the Department of Community Affairs, Local Finance Board, transmitted the matter as to OAL Dkt. No. CFB 01524-15 to the Office of Administrative Law (OAL), where it was filed on January 30, 2015, 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. See also N.J.S.A. 40A:9-22.12 and N.J.A.C. 5:35-1.1(j). After several telephone conferences, the parties advised that a second appeal was being transmitted to the OAL and agreed that the cases should be consolidated. That appeal was transmitted to the OAL and filed on November 18, 2015, under OAL Dkt. No. CFB 18892-15.[1] During the telephone conference held on December 9, 2016, the parties agreed that the respondent would file a motion for summary decision and a briefing schedule for opposition and reply was established.

For the reasons discussed below, the LFB's motion for summary decision charging that petitioner violated N.J.S.A. 40A:9-22.5(d) when he appointed himself Emergency Management Coordinator (EMC) and when he vetoed the Council's resolution seeking to decrease the salary of the EMC is **GRANTED**. However, the motion for summary decision charging the petitioner with a violation of Local Government Ethics Law (LGEL) for the collection of EMC salary and his casting a vote on the issue raising the Mayor's salary is **DENIED** because there is a dispute as to a material fact.

UNDISPUTED FACTS

On January 20, 2003, petitioner began serving as the Borough of Riverdale EMC. Petitioner assumed the position of the Mayor of the Borough of Riverdale when

[1] I **ORDER** that the matters be and hereby are consolidated.

the previous mayor (Mayor Dedio) resigned on September 2, 2003. Petitioner served the remainder of the previous mayor's unexpired terms of office for Mayor and EMC. The EMC term of office ended on December 31, 2003. The office of EMC is a position that has been historically held by the Riverdale Mayor since 1989.

At the Reorganization Meeting for Riverdale on January 5, 2004, petitioner acknowledged re-appointing himself to the position of EMC for an additional three-year term. At the Reorganization Meeting for Riverdale on January 2, 2007, petitioner acknowledged re-appointing himself to the position of EMC for another three-year term. At the Reorganization Meeting for Riverdale on January 4, 2010, petitioner did not include his re-appointment on the appointments list. Despite the fact that petitioner was not on the re-appointment list, Budesheim continued to serve as the EMC and receive pay for the position during the new term. The scope of this third term was from January 1, 2010, until December 31, 2012, but Budesheim resigned from the position on August 16, 2012. Budesheim appointed a replacement EMC on August 6, 2012, effective August 16, 2012. By statute, the Riverdale Mayor may appoint an EMC for a three-year term.

On December 19, 2011, Riverdale passed Ordinance 16-2011, which increased the Mayor's salary range. The Council voted on this proposed increase for the Mayor's position and the vote resulted in a 3-3 tie.

On January 16, 2012, the Riverdale Council considered reducing the EMC's salary range. The proposed EMC salary range was a minimum of $0 to a maximum of $5,000. The current salary for the EMC position on January 16, 2012, was $14,325. The Riverdale Council voted unanimously (6-0) to reduce the EMC salary range. Mayor Budesheim vetoed the Council's resolution.

At the meeting of the Riverdale Council on July 16, 2012, Mayor Budesheim introduced to the Council a proposed resolution seeking to increase the Mayor's salary by $14,319 and to decrease the EMC salary from $14,325 to $0. When Budesheim resigned from the EMC position on August 16, 2012, the newly appointed EMC began

receiving compensation as the EMC at $5,000 per year. Even though Budesheim resigned from the EMC position, he continued to receive a salary in the same amount through the end of December 31, 2012. In addition, Budesheim was paid the same amount during 2013, even though he never served as EMC during any part of the three-year term beginning January 1, 2013.

On August 19, 2013, the Riverdale Council considered a proposed resolution that sought to increase the Mayor's salary by $14,375. After discussion, the Council vote ended in a 3-3 tie. Budesheim, as Mayor, cast the deciding vote in favor of the salary range increase pursuant to his tie-breaking authority pursuant to N.J.S.A. 40A:60-5. By passing this resolution, Budesheim's salary increased.

The LFB undertook an investigation into the charges of two possible violations of the LGEL. N.J.S.A. 40A:9-22.5(c) and (d). On March 7, 2014, the LFB issued Budesheim a Notice of Investigation letter. On December 12, 2014, the LFB issued a Notice of Violation to Budesheim for violations of N.J.S.A. 40A:9-22.5(c) and (d). The Board assessed three fines of $250 for each count of violations of N.J.S.A. 40A:9-22.5(d) by acting in an official capacity in a matter where a disqualifying interest existed. The Board also assessed a fine of $500 for securing unwarranted privileges or advantages in violation of N.J.S.A. 40A:9-22.5(c). The Notice of Violation also informed Budesheim of his right to request an administrative hearing within thirty days.

During the investigation into the alleged subsection (c) violation, the Board became aware of additional possible violations of the Local Government Law by Budesheim. Thus, on December 12, 2014, the Board issued a Notice of Investigation for these additional potential violations of N.J.S.A. 40A:9-22.5(d).

On January 15, 2015, Budesheim submitted a letter to the Board, providing additional information in defense against the violations the Board found on December 12, 2014, as well as the alleged N.J.S.A. 40A:9-22.5(d) violations that were still under investigation.

On May 15, 2015, the LFB dismissed its investigation into LFB Complaints 12-090 and 13-011 with respect to Mayor Budesheim's vote to break a tie of the governing body regarding Ordinance 16-2011, which sought to increase the salary range of the position of the Mayor. This was done based on the fact that although the Board determined this vote constituted a violation of subsection (d), the Board acknowledged Budesheim's Advice of Counsel defense with regard to this charge.

However, on May 15, 2015, the Board also issued a Notice of Violation pursuant to LFB Complaints 12-090 and 13-011 for Budesheim vetoing Ordinance 02-2012, which lowered the salary range for the position of EMC. The Board determined that this veto violated N.J.S.A. 40A:9-22.5(d), which prohibits acting in an official capacity despite a disqualifying interest. Budesheim was notified of his thirty-day period to request an administrative hearing and was assessed a $250 fine for this violation.

CONCLUSIONS

Burden of Proof in a De Novo Hearing

Generally administrative contested cases are heard de novo. In re Morrison, 216 N.J. Super. 143, 147, 151 (App. Div. 1987); Grasso v. Borough Council of Glassboro, 205 N.J. Super. 18, 26 (App. Div. 1985), certif. denied, 103 N.J. 453 (1986). A hearing de novo means trying the matter anew, as if it had not been heard before and as if no decision had been issued before. Farmingdale Supermarket v. U.S., 336 F. Supp. 534, 536 (D. N.J. 1971); Housing Auth. of Newark v. Norfolk Realty Co., 71 N.J. 314, 326 (1976). Such hearings involve introduction of relevant and material evidence and application of independent judgment to the evidence. Weston v. State, 60 N.J. 36, 45 (1972). The standard of proof in administrative proceedings is a preponderance of the credible evidence. In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962).

In an administrative enforcement matters, the state agency bears the burden of proof by the preponderance of the competent and credible evidence of facts essential

to the case. Atkinson, supra, 37 N.J. at 149. Here, petitioner is charged with ethics violations by the LFB. The respondent filed a Motion for Summary Decision because it was their position that the underlying facts were not contested. Therefore, the LFB bears the ultimate burden of proof, notwithstanding it has been designated as the respondent.

Summary Decision

The rules governing practice in the OAL provide that a Motion for Summary Decision may be granted if there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. This provision mirrors the language of Rule 4:46-2 and the Supreme Court's decision in Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67 (1954). Under N.J.A.C. 1:1-12.5(b), the determination to grant Summary Judgment should be based on the papers presented as well as any affidavits, which may have been filed with the application. In order for the adverse, i.e., the non-moving party to prevail in such an application, responding affidavits must be submitted showing that there is indeed a genuine issue of fact, which can only be determined in an evidentiary proceeding. The Court in Brill v. Guardian Life Insurance Company of America, 142 N.J. 520, 523 (1995), set the standard to be applied when deciding a Motion for Summary Judgment. Therein the Court stated:

> The determination whether there exists a genuine issue with respect to a material fact challenged requires the Motion Judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party . . . are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.

If the non-moving party's evidence is merely colorable, or is not significantly probative, summary judgment should not be denied. Bowles v. City of Camden, 993 F. Supp. 255, 261 (D.N.J. 1998).

Based on the Briefs and Affidavits presented by the parties I **FIND** that there is no genuine issue of material fact and the motion by the respondent can be decided summarily.

The Local Government Ethics Law

The Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq., was enacted in 1991 to establish a statewide code of ethics for the officers and employees of local governments. The standards of conduct prescribed by the Law are applicable to all local government officers and employees, including individuals such as the petitioner in his newly elected position as a freeholder. N.J.S.A. 40A:9-22.3(f) and (g).

The law recognizes that public office and public employment are a public trust, and that the democratic form of government depends upon the public's confidence in the integrity of its elected and appointed representatives. N.J.S.A. 40A:9-22.2. Even the perception of unethical conduct can seriously damage that public trust and confidence. N.J.S.A. 40A:9-22.2. Thus, "proof of actual dishonesty, or an actual conflict of interest, need not be shown to establish a breach of the law." Shapiro v. Mertz, 368 N.J. Super. 46, 51 (2004) (citing Wyzykowski v. Rizas, 132 N.J. 509, 524 (1993)). In each case, the decisive question is "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." Van Itallie v. Franklin Lakes, 28 N.J. 258, 268 (1958); see also Griggs v. Borough of Princeton, 33 N.J. 207, 219 (1960); Lafayette v. Bd. of Chosen Freeholders, 208 N.J. Super. 468, 473 (App. Div. 1986).

With legislative acts, invalidation ordinarily results **only** if the act is "tainted with fraud, or palpably not in the service of the public interest, or otherwise a clear perversion of power," whereas quasi-judicial acts fall if there is found "private interest at variance with the impartial performance of . . . public duty." Ibid. (citations omitted). Whether a particular interest is sufficient to disqualify a public official is a factual determination that depends on the circumstances of the particular case; "[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." Van Itallie, supra, 28 N.J. at 268.

The appearance of impropriety must be "something more than a fanciful possibility. It must have some reasonable basis." Higgins v. Advisory Comm. on Prof'l Ethics of the Supreme Court of N.J., 73 N.J. 123, 129 (1977). The Court has observed that:

> [l]ocal 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 were so, it would discourage capable men and women from holding public office . . . [Courts] 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.
>
> [Van Itallie, supra, 28 N.J. at 269.]

As the Wyzykowski Court stated, a conflict does not exist unless "contradictory desires [are] tugging the official in opposite directions." Wyzykowski, supra, 132 N.J. at 524 (quoting LaRue v. Twp. of E. Brunswick, 68 N.J. Super. 435, 448 (App. Div. 1961)).

"The key is whether there is a 'potential for conflict'" created by the circumstances. "A conflicting interest arises when the public official has an interest not shared in common with the other members of the public." Shapiro, supra, 368 N.J. Super. at 53. A public official's interest can be disqualifying whether it involves an interest belonging to the official directly or coming to the official indirectly by way of a closely connected individual. A public official's interests can also be disqualifying whether they are financial or personal. Ibid. In combining these two divisions, the Supreme Court has recognized four types of situations that require disqualification:

> (1) "Direct pecuniary interests" when an official votes a matter benefiting the official's own property or affording a direct financial gain;

> (2) "Indirect pecuniary interests" when an official votes on a matter that financially benefits one closely tied to the official, such as an employer or family member;
>
> (3) "Direct personal interest" when an official votes on a matter that benefits a blood relative or close friend in a non-financial way, but a matter of great importance . . . .; and
>
> (4) "Indirect personal interest" when an official votes on a matter in which an individual's judgment may be affected because of membership in some organization and a desire to help that organization further its policies.
>
> [Wyzykowski, supra, 132 N.J. at 525-26.]

In order to determine if a particular interest is disqualifying, courts evaluate the specific factual circumstances at issue. See Shapiro, supra, 368 N.J. Super. at 53. If the circumstances of the particular case fall into one of the four categories outlined above, the interest is necessarily determined to be disqualifying, to avoid even the appearance of bias. See Wyzykowski, supra, 132 N.J. at 525-26.

Budesheim Appointing Himself to the Position of EMC, Casting a Vote as Mayor to Increase Mayoral Salary, and Vetoing a Decrease of the EMC Salary

The pertinent statute at issue is N.J.S.A. 40A:9-22.5(d), which provides:

> 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.
>
> [Emphasis added.]

In Wyzykowski, supra, 132 N.J. at 525-26, our Supreme Court identified four types of conflicts that would require a local government official or employee to disqualify himself from acting in his official capacity to wit: (1) a direct pecuniary interest, (2) an

indirect pecuniary interest, (3) a direct personal interest, or (4) an indirect personal interest.

The allegations against petitioner are that by participating in votes which affected his salaries as Mayor and EMC and appointing himself as the EMC, he violated N.J.S.A. 40A:9-22.5(d). Specifically the LFB avers that the petitioner had a direct personal interest when Budesheim nominated himself to the compensated position of EMC and when he cast the tie-breaking vote to increase mayoral salaries, including his own. In addition, the Board avers that Budesheim had direct personal interest when he used his veto power to block a unanimously approved Council resolution that would have lowered his EMC salary absent his veto. Therefore, these actions violated the ethical standards prescribed by N.J.S.A. 40A:9-22.5(d).

Petitioner raises issues in an attempt to avoid summary decision by stating that there is a question as to whether Budesheim appointed himself as EMC. This issue fails because there is no real dispute that in fact Mayor Budesheim (the only person with the power to appoint an EMC) had appointed himself as EMC. This clearly violates N.J.S.A. 40A:9-22.5(d). After this self-appointment, the Riverdale Council confirmed the petitioner's appointment. Petitioner further raises an issue that the act of self-appointment was historically practiced in the Borough of Riverdale. This issue is clearly irrelevant when making the determination as to whether there was a violation of the LGEL.

Lastly, the petitioner attempts to argue that he had a motivation to address budgetary issues when dealing with the self-appointment by himself as Mayor to the position of EMC. This defense must also fail. The issue boils down to whether such self-appointment was done (it was) and whether it is permitted (it is not). The state of mind of the Mayor is not a factor on this issue. See N.J.S.A. 40A:9-22.5(c).

Petitioner also attempts to raise a defense that the veto of the reduction of the EMC salary and the vote to approve the increase of the mayoral salary was motivated by his attempt to address budgetary issues. Petitioner alleges that these votes

reflected the fact that there was a long-standing understanding in Riverdale that the Mayor and the EMC were somehow connected and that the EMC position (a paid position) was given to the Mayor in an effort to increase the Mayor's salary. One cannot escape, however, the fact that voting to alter the law addressing one's own salary violates N.J.S.A. 40A:9-22(d).

Indeed, N.J.S.A. 40A:9-22.5(d), only requires proof that petitioner "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 . . . ." These essential elements were present in this case. And an ethics violation only occurs if **petitioner**, his immediate family or his business organization **has** a direct or indirect financial or personal involvement in the subject voted upon. Again, these essential and material elements were present in the vote at issue as well as appointing himself to a compensated position as EMC. The first part of the statute is linked to the second part by the verb **has**. Petitioner can only be guilty of the aforementioned statute if he, his family or his business organization **has** a direct or indirect interest in the vote. Such is the case here.

Based upon the foregoing, I **CONCLUDE** that the petitioner, when acting as Mayor by appointing himself to a compensated position as the EMC, clearly received a direct pecuniary interest. I further **CONCLUDE** that the petitioner, when acting as Mayor, vetoed the Council Resolution seeking to decrease the EMC's salary while he was serving as Riverdale's EMC and to vote to increase the mayoral salaries, including his own also received direct pecuniary interest.

Petitioner acted in several circumstances wherein they could be categorized a disqualifying conflicts of interest. Budesheim violated N.J.S.A. 40A:9-22.5(d) when he appointed himself to the position of EMC. The statute creating a position of EMC empowers the mayor of each municipality to appoint an EMC to serve for a three-year term. The only person authorized to appoint an EMC is a Mayor. N.J.S.A. 40A:9-22.5(d) prohibits an elected official from self-dealing while serving the public.

New Jersey courts have held that a local government official may be disqualified from voting on any matter in which he has a personal or pecuniary interest. Hazlet v. Morales, 119 N.J. Super. 29, 33 (1972). Specifically self-appointment has consistently been held to violate common law conflict of interest principles and the Local Government Ethics law. Gayder v. Spiotta, 206 N.J. Super. 556, 562 (App. Div. 1985) (which held that public official may not use their offices for personal advantage and accordingly may not use their appointment authority to appoint themselves); see Grimes v. Miller, 113 N.J.L. 553 (Sup. Ct. 1934); Morales, supra, 119 N.J. Super. 29. "A member of a municipal governing body may not, therefore, vote to appoint himself to another office." Gayder, supra, 206 N.J. Super. at 562. In addition: "It is contrary to the policy of law for an officer to use his official appointing power to place himself in office, so that, even in the absence of a statutory inhibition, all officers who have the appointment power are disqualified for appointment to the officers to which they may appoint . . . ." Grimes, supra, 113 N.J.L. at 558.

There is no dispute that the facts firmly support the conclusion that Budesheim appointed himself to the position of EMC. There is also no dispute that he appointed and re-appointed himself to the EMC position after the 2003 term. Petitioner became the Mayor on September 2, 2003, and also served as EMC until resignation on August 16, 2012.

A mayor is without doubt a public official. A mayor must appoint an EMC by the express language of the law establishing the EMC position and the EMC is a paid position. The EMC reports to the mayor. Accordingly, there is no way that a mayor can be appointed as EMC without a corresponding violation of the Local Government Ethics Law.

In addition, petitioner violated N.J.S.A. 40A:9-22.5(d) when he vetoed the Riverdale Council Resolution seeking to decrease the Riverdale's EMC salary while he was serving in that position. There is no dispute that the Riverdale Council passed a resolution by a vote of 6-0 to lower the salary range for the EMC. During the time of this vote, Budesheim was the Borough's EMC.

After the Riverdale Council voted to reduce the EMC salary range, Budesheim exercised his mayoral powers by vetoing the enactment of the salary reduction resolution. This act by Budesheim contravenes the language of the Local Government Ethics law, which states: "No local government officer or employee shall act in his official capacity in any matter where he . . . has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment." N.J.S.A. 40A:9-22.5(d). The Local Government Ethics Law bans public officials from acting in their official capacity whenever there is the potential for impropriety, or the appearance thereof, because local government officials are entrusted with acting for the benefit of the public. It is critical that officials recuse themselves from situations where actual bias, or the perception that officials may be affected by bias, could interfere with their representation of the public. Recusal is essential because it is necessary to ensure the integrity of municipal government and the public's trust in that integrity. N.J.S.A. 40A:9-22.2.

In this case, Budesheim had a direct financial interest in his salary as EMC. The Riverdale Council's vote would have reduced the petitioner's salary while serving as the EMC. Instead, the petitioner vetoed the resolution after it was unanimously passed. This was action taken by Budesheim in a matter in which he had a direct financial interest and, as such, was a violation of N.J.S.A. 40A:9-22.5(d). See Wyzykowski, supra, 132 N.J. at 524-26.

Based upon the legal and factual circumstances, I **CONCLUDE** that the LFB's proofs are not sufficient to meet the legal and factual elements found in N.J.S.A. 40A:9-22.5(d), with regard to petitioner's vote to increase the mayor's salary (Ordinance 16-2011). However, LFB's proofs are sufficient regarding Budesheim's veto of the resolution to decrease the salary of the EMC (Ordinance 02-2012).

Accordingly, I **CONCLUDE** that the petitioner further violated N.J.S.A. 40A:9-22.5(d) when he cast a veto to the Council's resolution seeking to decrease the salary

of the EMC (a position Budesheim served in), which is supported by the law and the relevant facts in this case.

Advice of Counsel Defense to Vote to Raise Mayoral Salary

Petitioner has presented in its responsive papers that he is entitled to a defense that he obtained the advice of counsel prior to making his tie-breaking vote on Resolution 16-2011, which raised the Mayor's salary. The attorney offered the following advice: "[T]he mayor in the case of a tie vote, may vote on a salary ordinance which includes the salary to be paid to . . . the mayor." The petitioner further avers that such action comports with Riverdale's form of government (under the non-Faulkner Act) wherein "The mayor shall preside at meetings of the council and may vote to break a tie." N.J.S.A. 40A:60-5(c).

There is no doubt that the mayor "may" cast such a vote. The question is whether Budesheim acted properly with regard to seeking and obtaining the advice of counsel on this issue. In order to establish that Budesheim did not meet the requisites for application of the advice of counsel defense, the LFB must show that Budesheim failed to meet the following:

> 1. That the approval or advice was received prior to the action being taken.
>
> 2. That the individual who offered the advice or approval relied upon possessed authority or responsibility with regard to ethical issues.
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> 3. That the individual seeking advice or approval made a full disclosure of all pertinent facts and circumstances.
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> 4. That the individual comply with the advice received, including any restrictions it might contain.
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> [In re Zisa, 385 N.J. Super. 188, 198-99 (App. Div. 2006).]

The LFB has failed, in its motion, to properly address all of the above issues and there remain issues of material fact as to whether this defense is entitled to such a

defense with regard to his vote on December 19, 2011, breaking the tie by the Council regarding an increase in the mayor's salary. Furthermore, the case cited by the respondent, In re Howard, 93 N.J.A.R.2d (Vol. 5 A) 1 (Executive Comm'n on Ethical Standards), aff'd as modified, 94 N.J.A.R.2d (Vol. 5A) 1 (App. Div. 1994), is not applicable here, since the public official in Howard failed to comply with the requirements set forth in Zisa, supra 385 N.J. Super. at 198, by withholding material information from the legal advisor. Both parties in this case should have the opportunity to fully develop the facts necessary either to establish or fail to establish such a defense. Accordingly, the applicability of this defense to the ethics charges alleged regarding Budesheim's vote on the increase of the mayor's salary will not be determined via a motion for summary decision.

CONCLUSION AND ORDER

Based upon the foregoing, I **CONCLUDE** that the LFB has established that petitioner violated N.J.S.A. 40A:9-22.5(d) when he appointed himself to the position of EMC. I, therefore, **ORDER** that these three counts (2004 EMC appointment; 2007 EMC appointment; and 2011 EMC appointment) of the ethics charges be **AFFIRMED**.

I further **CONCLUDE** that the LFB established that petitioner violated N.J.S.A. 40A:9-22.5(d) with his veto of the resolution to decrease the salary of the EMC (Resolution 02-2012) and thus I **ORDER** the ethics charge on this matter be **AFFIRMED**.

I further **CONCLUDE** that the LFB failed to establish in its motion that the petitioner violated N.J.S.A. 40A:9-22.5(c) for collecting a salary for the EMC position after he resigned from that position as an issue of material fact has been raised regarding the petitioner's collection of said salary and further that the LFB failed to establish in its motion that the petitioner violated N.J.S.A. 40A:9-22.5(d) with regard to his vote with reference to the resolution to increase the mayor's salary (Resolution 16-2011) as there are factual issues and the petitioner has the right to present the advice of counsel defense and the motion on this ethics charge I hereby **ORDER** is **DENIED**.

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 10, 2016
DATE

MICHAEL ANTONIEWICZ, ALJ

jb