

MUNICIPAL ETHICS BOARD

February 24, 2011

CALL TO ORDER

Ms. Messineo called the meeting to order at 7:24 p.m. in the Council Chambers in the Municipal Complex. Ms. Messineo read a statement indicating all requirements of P.L.1975, Chapter 231 (The Open Public Meeting Act) had been met.

ROLL CALL

Present: Catherine Barrier, Agnes Messineo, Martin Lokomowitz, John Paff,
Absent: Patricia Bacon, Cynthia Voorhees

PUBLIC DISCUSSION

A motion was made by Ms. Barrier to open the meeting to the public. Said motion was seconded by Ms. Messineo and carried unanimously upon voice vote.

There being no comments made by the public at this time, a motion was made by Ms. Barrier to close the public discussion. Said motion was seconded by Ms. Messineo and carried unanimously upon voice vote.

APPROVAL OF MINUTES

Regular Meeting – February 9, 2011

A motion was made by Mr. Paff to approve the Regular Meeting Minutes of February 9, 2011 amended as follows:

- Page 7, 2010 Outstanding Disclosure Statements - First paragraph, line 4, change “file” to “filed”;
- Page 7, Third paragraph, line eight, change “municipal court” to “Special Civil Part”;
- Page 7, Fourth paragraph, line seven, change “Special Civil Superior Court to Special Civil Part Within Superior Court”;
- Page 7, Fifth paragraph, line two, remove “Trial”;
- Page 8, Eighth paragraph, line four, change “amending” to “amended”;
- Page 9, Second paragraph, line two, change “to” to “do”;
- Page 10, Provision of offices to municipal ethics board, paragraph 6, line three, change “is” to “if”;
- Page 10, paragraph 7, line 3, change “make” to “may”.

Said motion was seconded by Ms. Barrier and carried as follows upon call of the roll:

AYES: Barrier, Messineo, Lokomowitz, Paff

NAYS: None

ABSENT: Bacon, *Voorhees*

Executive Session – February 9, 2011

The aforesaid minutes were held until corrected during this meeting's Executive Session.

REPORTS

2011 Financial Disclosure Schedule

Members of the Board questioned the status of the mailing of the notices that were to be mailed on February 10, 2010. Because of time constraints, the letters had not been mailed out but will be mailed on Monday, February 28, 2011.

Proposed Letter of Notification to Subject of Alleged Accusation

Mr. Paff presented the letter he drafted in response to a discussion held at the previous Board meeting. The letter will be used to inform the subject of an alleged complaint against him/her. The letter reads as follows:

(Township/Board Letterhead)
(Date)

Beth Officer
123 Main St.
Somerset, NJ 08873

Dear Ms. Officer:

*As you may be aware, the Municipal Ethics Board is authorized to investigate alleged violations of the Municipal Ethics Code **even in certain circumstances** and levy monetary penalties against Franklin Township officers and employees who violate the **Municipal Code**.*

The Board has received a complaint alleging that you have violated Sec. 2.D of the Code, which states:

- D. No local government officer or employee shall act in his/her official capacity in any matter where he/she, a member of his/her immediate family, or business organization in which he/she has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his/her objectivity or independence or judgment.*

The nature of the complaint, and the facts and circumstances surrounding it are:

That on November 11, 2010, in your official capacity as a Commissioner of Fire District No. 5, you voted in favor of awarding a \$2,350 contract to Advanced Radio Repair Service of East Brunswick, which is a business in which your husband, Donald, owns a 25% interest.

The Board, after conducting a preliminary investigation, determined that this complaint is a) within its jurisdiction, b) not frivolous and c) has a reasonable factual basis. Accordingly, the Board has directed that a further investigation be conducted.

*As the Franklin Township officer or employee against whom the complaint was filed, you are invited to provide the Board with any statement or information concerning the complaint that you would like the Board to consider. If you choose to provide the Board with a statement or information, you must do so within thirty (30) days of your receipt of this letter. If you need additional time to prepare your statement or information, you must make written application for an extension within thirty (30) days of your receipt of this letter. Your communications to the Board must be in writing and mailed or delivered to the Township Clerk in a sealed envelope that is plainly marked "**Municipal Ethics Board Material - Confidential**".*

Enclosed for your review are current copies of the Franklin Township Code of Ethics and the Ethics Board's Rules and Regulations.

Thank you for your attention to this matter.

Sincerely,

*Patricia Bacon
Chairperson*

Mr. Lokomowitz questioned if the letter would tell the subject what the charges are and what recourse he/she had. Mr. Paff answered that he tracked State Statues very closely to compose the letter and the issue of the alleged violation is addressed and the subject is advised that the first step in the process is the submission of a statement or information. The enclosed copy of the "Code of Ethics" contains the information concerning the recourses available to the subject.

Ms. Messineo asked if the subject would be able to request a hearing before the Board to which Mr. Paff replied that the rules and regulations should be "tightened up" so they would be cleaner and clearer and in accord with state regulations. ~~Ms. Barrier~~ **Mr. Lokomowitz** asked if rules and regulations of the Board can be amended without Township Council approval. Mr. Paff replied that the Board can change regulations and added that the expense of holding live hearings is not routine, as that would require attorney involvement.

A discussion followed with regard to the contents of the letter. Ms. Barrier noted she did not see included an option for the subject to "talk" to the Board and that that option cannot be denied to the subject. Members of the Board expressed their opinions regarding the consequences of opening the process to public hearings and the required attorney's services. Mr. Paff noted that public sessions would compromise the confidentiality of the accuser and, without an attorney employed by the Board, he was not comfortable with the Board doing public hearings on their own.

Ms. Messineo referred to minutes of the Board meeting of February 2, 2010, reading the following section of the revised Municipal Ethics Code:

(5) Notification of Involved Parties; Discovery and Hearings If at any point the Board determines that reasonable doubt exists as to whether the officer or employee against whom the complaint was filed is in conflict with the provisions of the Ethics Code, the Board shall notify the complainant and the officer or employee against whom the complaint was filed. Both parties shall have the opportunity to present to the Board a statement and/or information concerning the complaint, within 30 days from receipt of the notification by the Ethics Board.”

Mr. Paff noted that State Law does govern the Board and that State law requires that the allegation shall be reduced to writing and the subject is to be notified of alleged accusation of wrong-doing. The subject shall have the opportunity to present defense and, if there is reasonable doubt as to guilt, the Board shall conduct a hearing. If the allegation is in regard to a written statement by the subject, as in the instance of a Financial Disclosure Statement, it does not precipitate a challenge.

Ms. Barrier opined that the language of the law is not clear and specific but Mr. Paff noted that the Board needs not to be paralyzed and, at this point, needs to move forward. Ms. Barrier agreed and suggested two amendments to the letter prepared by Mr. Paff. Ms. Barrier suggested **adding** that the first paragraph, line two “Municipal Ethics Board” be changed to “and even, in certain circumstances add “Municipal Ethics Code” and in the first paragraph, page two, line six, change “Ethics Board Material” to “Municipal Ethics Board Material – Confidential”.

A motion was made by Mr. Paff to accept and approve the proposed initial letter to subject of complaint as amended. Said motion was seconded by Ms. Barrier and carried as follows upon call of the roll:

AYES: Barrier, Lokomowitz, Messineo, Paff

NAYS: None

ABSENT: Bacon, Voorhees

OLD BUSINESS

Mr. Paff presented the following list of items that are still pending before the Board:

- 1) Letters to those officers with filing deadline of February 3, 2011;
- 2) Tracking the member and alternate of the Fire Prevention Board who are appointed by the Fire Chief’s Association to make sure that they file Financial Disclosure Statements;
- 3) Reminder letters to 2010 filers whose forms were filed with incomplete information;
- 4) Proposed amendments to complaint procedures;
- 5) Chairwoman Bacon’s discussion with the Local Finance Board regarding collection of fines mechanism.

Mr. Paff explained that members of the Fire Prevention Board, an entity of the Township of Franklin, are required to file Financial Disclosure Statements. While most of the members of the Board are Fire Commissioners, who are already required to file Financial Disclosure

Statements, one regular and one alternate member are non-commissioners appointed by the Franklin Township Fire Chiefs' Association. Accordingly, the Township needs to develop a procedure so that these two non-Commissioners are held accountable to their filing requirements.

Mr. Paff also explained that State Regulations govern the appeals process. If Board or Administrative Judge deems process complete, the law directs appeals on what is in record – if not given enough due process the subject is allowed to add information at time of appeal.

Mr. Lokomowitz stated that he is not in favor of adopting changes when other members of the Board are not present at the meeting. Ms. Barrier inquired if there is any need to change the letter before the Board can notify the subjects. Mr. Paff stated that the Board is bound by current code that requires that subject must be notified. He suggested that the letter can be sent without the Rules and Regulations attached and the discussion concerning changes should be postponed until all members are present.

EXECUTIVE SESSION

The following resolution was moved by Ms. Barrier, seconded by Mr. Lokomowitz and carried unanimously upon voice vote:

WHEREAS, Section 8 of the Open Public Meetings Act, (N.J.S.A. 10:4-12 (b) (1-9), Chapter 231, P.L. 1975, permits the exclusion of the Public from a meeting under certain circumstances; and

WHEREAS, the Municipal Ethics Board of the Township of Franklin is of the opinion that such circumstances do exist;

NOW, THEREFORE, BE IT RESOLVED by the Municipal Ethics Board of the Township of Franklin in the County of Somerset, State of New Jersey, as follows:

- 1 The public shall be excluded from discussion of and action upon the hereinafter specified subject matters;
- 2 The general nature of the subject matter to be discussed is as follows: ***Review of February 9, 2011 Executive Session Minutes; Complaints Nos. 10-01A; 10-03 and 10-04.***
- 3 The Municipal Ethics Board may take official action on those items discussed in Executive Session upon completion of the Execution Session.
- 4 The minutes of the discussions shall be made available to the public as soon as the matters under discussion are no longer of a confidential or sensitive nature.
- 5 This resolution shall take effect immediately.

A motion was made by Mr. Lokomowitz, seconded by Mr. Paff to come out of Executive Session at 10:00 p.m. Said motion carried unanimously upon voice vote.

APPROVAL OF EXECUTIVE SESSION MINUTES

February 9, 2011

A motion was made by Ms. Barrier to approve the aforesaid minutes as amended during tonight's Executive Session. Said motion was seconded by Mr. Lokomowitz and carried as follows upon call of the roll:

AYES: Barrier, Lokomowitz, Messineo Paff,

NAYS: None

ABSENT: Bacon, Voorhees

Motion – Complaint #10-01A

Motion was made by Mr. Paff to direct the Clerk to send a letter to the subject of Complaint #10-01A as modified in Executive Session, simultaneously by regular mail and be certified mail return receipt requested. Motion was seconded by Ms. Barrier and carried unanimously.

Motion – Complaint #10-03

Motion was made by Mr. Paff to direct the Clerk to send a letter to the subject of Complaint #10-03 as modified in Executive Session, simultaneously by regular mail and certified mail return receipt requested. Motion was seconded by Ms. Barrier and carried unanimously.

Motion – Fire District #1

Motion was made by Mr. Paff to direct the Clerk to send the draft of the December 20, 2010 letter to the Clerk of Fire District #1 if, any only if, the letter has not been sent already. Motion was seconded by Mr. Lokomowitz and carried unanimously.

Motion – Next Meeting

Ms. Messineo asked for a consensus of the members present as to a tentative date for the next meeting. March 23, 2011 and March 30, 2011 were suggested. Ms. Messineo will contact the absent members and ask their preference for the next meeting date.

ADJOURNMENT

A motion to adjourn was made by Mr. Paff, seconded by Ms. Barrier, and carried unanimously upon voice vote. The meeting was adjourned at 10:05 p.m.

Approved: *As Amended*

Date: *March 30, 2011*

Virginia M. Woodbury,
Deputy Township Clerk