

MUNICIPAL ETHICS BOARD

August 17, 2011

CALL TO ORDER

Ms. Bacon called the meeting to order at 7:15 p.m. in the Council Chambers in the Municipal Complex. Ms. Bacon read a statement indicating all requirements of P.L.1975, Chapter 231 (The Open Public Meeting Act) had been met.

ROLL CALL

Present: Patricia Bacon, Catherine Barrier, Martin Lokomowitz, Agnes Messineo, John Paff, Cynthia Voorhees
Absent: No One

PUBLIC DISCUSSION

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

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

APPROVAL OF MINUTES

Regular Meeting - July 20, 2011

A motion was made by Mr. Lokomowitz to approve the Regular Meeting Minutes of July 20, 2011 as amended as follows:

- Page 4, under "(a)", first line, delete the second "the".

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

AYES: Bacon, Barrier, Lokomowitz, Messineo, Paff
NAYS: None
ABSTAIN: Voorhees

Executive Session - July 20, 2011

A motion was made by Mr. Paff to approve the Executive Session Minutes of July 20, 2011 as submitted. Said motion was seconded by Ms. Barrier and carried as follows upon call of the roll:

AYES: Bacon, Barrier, Lokomowitz, Messineo, Paff
NAYS: None
ABSTAIN: Voorhees

REPORTS

Ms. Bacon reported the Board received a letter from Thomas H. Neff; Chair of the Local Finance Board dated August 1, 2011. Said letter stated the Local Finance Board was in receipt of the fine submitted

to the Franklin Township Municipal Ethics Board by Robert Shepherd and said payment would be processed in accordance with the Local Finance Board procedures.

OLD BUSINESS

Proposed Changes to the Code and/or Rules and Regulations

After a lengthy discussion and several versions, a motion was made by Ms. Voorhees to adopt the following as replacement for B. Ethics complaint procedure, sections 1 through 3 in the Franklin Township Municipal Ethic’s Board Rules and Regulations:

B. Ethics complaint procedure.

(1) Initiation of Ethics Process.

(a) Ethics Complaints

Any person who has knowledge or information of a violation of the Municipal Ethics Code may file a complaint with the Municipal Ethics Board. The complaint, which shall be signed by the complainant, shall be in writing and transmitted to the Township Clerk in a sealed envelope that is clearly marked “Municipal Ethics Board” and shall contain a clear and concise statement of the facts alleged to constitute a violation of the Code. Signed ethics complaints shall be processed in accordance with these Rules and Regulations.

(b) Anonymous Requests for Investigations

Any person who has knowledge or information of a violation of the Municipal Ethics Code may, in lieu of filing a complaint, anonymously request the Municipal Ethics Board to conduct an investigation. An anonymous request for an investigation shall be in writing and transmitted to the Township Clerk in a sealed envelope that is clearly marked “Municipal Ethics Board” and shall contain a clear and concise statement of the facts alleged to constitute a violation of the Code. The Board may use information derived from an anonymous request to initiate its own investigation.

(c) Initiation of Complaints by Municipal Ethics Board

The Municipal Ethics Board may upon its own initiative, initiate a complaint against a local government officer or employee, in which case the summary of the complaint shall be contained in the Board’s executive minutes and the complaint shall proceed in accordance with these Rules and Regulations.

(2) Forwarding of Complaint

Upon receipt of an envelope addressed to the Municipal Ethics Board, the Township Clerk shall forward it, unopened, to the Chairperson or Vice-Chairperson of the Municipal Ethics Board within five days after receiving it.

(3) Acknowledgement of Complaint

The Municipal Ethics Board shall acknowledge receipt of a complaint within fifteen days of receipt. Within the next thirty (30) days, the Board shall commence a preliminary investigation as to whether the complaint is within the Board's jurisdiction or frivolous or without any reasonable factual basis.

Said motion was seconded by Mr. Lokomowitz and carried unanimously upon call of the roll.

The following sections will be discussed and reviewed at the next Municipal Ethics Board meeting:

(4) ~~The Preliminary Determination of Further action on the Complaint and/or Initiation of Investigation~~

~~The Board shall make a determination as to whether the complaint is outside its jurisdiction or whether the allegations, if true, constitute a violation of the Code or whether the complaint requires further attention. The Board shall reduce that its conclusion to writing and shall transmit a copy thereof to the complainant within 60 days from receipt of the signed written complaint from the Township Clerk. The Board shall notify the complainant every 60 days of the status of the complaint and the actions of the Board regarding it.~~

~~If the Board determines that it has jurisdiction over such a complaint and that there is a reasonable basis for it, the Board shall, within the 60 days following receipt of the signed written complaint from the Township Clerk, initiate an investigation concerning the facts and circumstances set forth in the complaint.~~

~~If the Board, in attempting to determine whether the complaint requires further attention, determines that it requires further information, the Board shall notify the complainant. The complainant has 30 days from receipt of the notification to present the Board with additional information. If the Board concludes that there is insufficient information to proceed, it shall reduce its conclusion to writing and shall transmit a copy thereof to the complainant and to the officer or employee against whom the complaint was filed. Said conclusion will not include the name of the complainant.~~

Upon completion of the preliminary investigation, the Board shall make a determination as to whether the complaint is outside its jurisdiction or frivolous or without any reasonable factual basis.

(a) If the Board concludes that the complaint is outside its jurisdiction, frivolous or without any reasonable factual basis, the Board shall advise the complainant, if his or her identity is known, and the local government officer or employee who is the subject of the complaint, in writing, of the Board's conclusion.

(b) If the Board concludes that the complaint is within its jurisdiction, not frivolous, and has a reasonable factual basis, the Board shall proceed in accordance with (5) below.

(5) Notification of Involved Parties; Discover and Hearings Investigation

~~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~~

- (a) ~~The Board shall notify the complainant and the local government officer or employee against whom the complaint was filed of the nature of the complaint and the facts and circumstances set forth therein.~~
- (b) ~~Both parties shall have~~ The local government officer or employee shall have the opportunity to present to the Board any statement and/or information concerning the complaint that he or she wishes. Such statement or information shall be delivered to the Board within 30 days from of receipt of the notification by the Ethics Board. Upon written application received within this 30 day period, the Board or its Chairperson may extend the time for filing such a statement or information.
- (c) The local government officer or employee who is the subject of the complaint may request to appear before the Board. However, such appearance is not required unless directed by the Board.
- (d) The Board shall, using its subpoena power if it chooses, obtain any further information or statements from any person with relevant information, or from any other source, necessary to conduct the investigation.
- (e) Every sixty days, the Board shall notify the complainant, if his or her identity is known, of the status of the complaint and the actions of the Board regarding it.

~~If the Board determines that reasonable doubt continues to exist 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 continue to conduct further investigation(s) and/or hearing(s) until it can render a decision. During this time, at 60-day intervals, it will inform both parties of the dates and duration of any meetings during which the case was discussed.~~

(6) Hearing.

If the Board, based on the information gathered thus far, is able to determine whether or not a violation of the Code occurred, it shall make a determination in accordance with (7) below. If, however, the Board, by a majority vote, determines that a reasonable doubt exists as to whether the local government officer or employee is in conflict with Municipal Ethics Code or any financial disclosure requirement, it shall conduct a hearing in conformity with the rules and regulations, insofar as they may be applicable, provided for hearings by a State agency in contested cases under the "Administrative Procedures Act," N.J.S.A. 52:14B-1 et seq.

(6) Decision, Penalties, and Appeal

~~The Board shall render a decision as to whether the conduct of the officer or the employee is in conflict with the provisions of the Ethics Ordinance. This decision shall be made by no less than two-thirds (2/3) of all members of the Board. If the Board determines that the officer or employee is in conflict with the provisions of the Ethics Code, it may impose any penalties which it believes appropriate within the limitations of the Ethics Code. A final decision of the Board may be appealed to the Local Finance Board within 30 days of the decision.~~

(7) Determination

- (a) If the Board determines, based upon the results of the investigation and any hearing held, by a two-thirds vote of all its members, that a violation of the Municipal Ethics Code has been committed by the local government employee or officer, the Board shall issue a Notice of Violation to that officer or employee containing the nature of the violation and assessing a penalty. The Notice of Violation shall be accompanied by a copy of N.J.A.C. § 5:35-1.4 and a notification that the Board's decision may be appealed to the Local Finance Board within 30 days of the decision.
- (b) Otherwise, the Board shall issue a Notice of Dismissal to the officer or employee and provide a copy to the complainant.
- (c) If an appeal is not timely filed by the local government employee or officer, the Notice of Violation shall be deemed the Final Decision of the Board.

(78) Confidentiality

~~In accordance with the Open Public Records Act:~~

- ~~▪ Allegations of violations of the Municipal Ethics Code shall be confidential;~~
 - ~~▪ The deliberative process of the Municipal Ethics Board shall be confidential;~~
 - ~~▪ Access to the findings of the Municipal Ethics Board shall be granted to the public upon release by the Municipal Ethics Board, by a vote of two thirds (2/3) of all its members.~~
- (a) Any complaints, statements, information, or documents obtained or prepared by the Board are deemed confidential and not subject to public disclosure during the course of the preliminary investigation or investigation to determine whether a violation of the Municipal Ethics Code has occurred, except as necessary for the Board to conduct the preliminary investigation or investigation.
 - (b) The Board's discussion regarding a preliminary investigation or investigation shall be in executive session. However, any vote by the Board regarding a preliminary investigation or investigation shall be in public session. In public session, the complaint shall only be identified by a docket number, determined by the Board.
 - (c) The Notice, the complaint and allied statements or information obtained by the Board during the course of the preliminary investigation or investigation are subject to public disclosure 30 days after mailing a Notice of Dismissal or a Notice of Violation.

~~(8) ***Unsigned Allegation of Violation(s)***~~

~~If the Ethics Board receives an unsigned allegation of violation(s), the Board may or may not initiate an investigation.~~

Collection of Fines Mechanism

A motion was made by Mr. Paff to direct the Township Clerk to send the following question to the Ethics Board Attorney:

“Could a form or process be developed, if legal, for the Municipal Ethics Board to be able to enforce and collect fines assessed by the Board for violations to the Franklin Township Ethics Code? Attached please find a three page analysis of the enforcement of fines.”

Said motion was seconded by Ms. Voorhees and carried unanimously upon voice vote.

EXECUTIVE SESSION

The following resolution was moved by Ms. Voorhees, seconded by Mr. Paff 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: ***Complaints Nos. 10-01A and 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.

The Board went into Executive Session at 9:27 p.m.

A motion was made by Ms. Voorhees, seconded by Mr. Lokomowitz to come out of Executive Session at 10:52 p.m. Said motion carried unanimously upon voice vote.

Ms. Bacon announced the following was discussed in Executive Session: Complaints Nos. 10-01A and 10-03 and 10-04.

Complaint No. 10-04

A motion was made by Mr. Lokomowitz to list as an executive session item at the next Municipal Ethics Board meeting the consideration of a potential conflict of interest in connection with Complaint No. 10-04. Said motion was seconded by Ms. Voorhees and carried upon call of the roll. Mr. Paff abstained from voting on the motion.

Complaint No. 10-03

A motion was made by Ms. Messineo to authorize Mr. Paff to obtain court documents in connection with Complaint No. 10-03. Said motion was seconded by Ms. Voorhees and carried unanimously upon call of the roll.

Next Meeting

It was the consensus of the Board to schedule the next meeting on Friday, September 23, 2011 at 6 p.m.

ADJOURNMENT

A motion to adjourn was made by Mr. Lokomowitz, seconded by Mr. Paff, and carried unanimously upon voice vote. The meeting was adjourned at 11:02 p.m.

Approved: *As Amended*

Date: *September 23, 2011*

Ann Marie McCarthy, Township Clerk