MARLBORO TOWNSHIP LOCAL ETHICS BOARD
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In the Matter of Investigation of
Ethics Complaint, Case No. 2021-02

JOHN C. GIBARDI, Complainant,

v.

JEFF CANTOR, Respondent.

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**DECISION OF MARLBORO TOWNSHIP ETHICS BOARD[1]**

On or about October 25, 2021, John C. Gibardi ("Complainant") filed the instant ethics complaint ("Complaint")[2] charging former Marlboro Township Councilman Jeff Cantor ("Respondent") with allegedly violating various provisions of the Marlboro Township Code of Ethics ("Code").[3] At the time the Complaint was filed, Mr. Gibardi was the Chairman of the Marlboro Township Republican Party and the Respondent, an incumbent, was running for re-election and re-appointment to the Marlboro Township Town Council.[4]

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[1] As referenced throughout this Opinion, the Marlboro Township Local Ethics Board is referred to as either the "MTEB" or "Board."

[2] The Complaint was dated October 25, 2021, however, it was not received by the MTEB until November 10, 2021.

[3] The State of New Jersey has promulgated a statewide standard of ethics for local government officials known as the "Local Government Ethics Law" which is codified at *N.J.S.A.* 40A:9-22.1 *et seq.* ("LGEL"). Implementing regulations have also been promulgated. *See N.J.A.C.* 5:35-1.1 to 1.6. The LGEL was enacted in 1991 to establish a statewide code of ethics for the officers and employees of local governments. The standards of conduct prescribed under the LGEL are applicable to all local government officers and employees, including individuals serving as elected members of municipal government. *N.J.S.A.* 40A:9-22.3. The LGEL is administered and enforced by the State's Local Finance Board, *N.J.S.A.* 40A:9-22.4, however, a county or municipality may, at its option, establish a county or municipal ethics board to adopt a local ethics code and to enforce a local code of ethics. *N.J.S.A.* 40A:9-22.13 and *N.J.S.A.* 40A:9-22.19. As it relates to this matter, Marlboro Township has in fact established a local ethics board (i.e., the Board) in accordance with *N.J.S.A.* 40A:9-22.19 and this Board has promulgated the Code which sets forth the standards, unless otherwise noted, to be applied in this matter. Indeed, the Code provides that this Board is charged with implementing the provisions of the LGEL.

[4] The Respondent did not succeed in his bid for re-election. The Respondent currently does not hold any public office.

On December 7, 2021, the Board took jurisdiction over the Complaint.[5] Thereafter, the Board conducted an extensive investigation that included obtaining sworn testimony from multiple witnesses, including the Respondent, former Marlboro Township Town Council member Carol Mazzola, Suzanne Branagan (Township Clerk), Jon Capp (Township Business Administrator), and, the Complainant.[6] The Board also received a letter from the Respondent dated January 7, 2022 which attached an "opinion letter" which was authored by a law firm based in Toms River, New Jersey, which was dated July 1, 2021.[7] The January 7, 2022 letter was the Respondent's initial response to the Complaint. The investigation in this matter was conducted in executive session in accordance with *N.J.A.C.* 5:35-1.2.[8]

Having now conducted a full and fair inquiry into this matter, and for the reasons set forth below, the Board has unanimously determined that the Respondent did not violate the Code and as such, the Complainant's Complaint should be dismissed.[9]

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[5] *See* Code, Art. XI(B) & (D).

[6] The Board also heard testimony from a citizen by the name of Daniel Matarese. Mr. Matarese appeared to testify on behalf of the Complainant.

[7] The "opinion letter" was apparently procured after the Respondent had spoken with Marlboro's Township Attorney.

[8] The Code, like the New Jersey Local Government Ethics Law, does not address whether a complaint is confidential or whether the investigation should be conducted in executive session. However, the Local Finance Board has, by regulation, determined that a complaint and any statements, documents or information obtained during an investigation are confidential, and that the investigation shall be conducted in executive session. *See* *N.J.A.C.* 5:35-1.2. We see no reason why an investigation conducted by the MTEB should be conducted any differently and we therefore followed the Local Finance Board's regulations in conducting our investigation in this matter.

[9] At the close of our investigation in this matter we had received correspondence from the Local Finance Board ("LFB") which had forwarded to us a complaint which had been filed against the Respondent. The claims in that complaint—which were filed anonymously and originally to the Office of the New Jersey Attorney General's Office but were then referred to the LFB—appeared to be entirely contrary to the evidence produced in this matter and as such, we rely on our opinion rendered here in response to that complaint.

## *A.* *Statement Of Facts*

According to the Complaint filed in this matter, the allegations in this case largely stem from the Respondent's alleged relationship to an entity commonly known as the Lucas Construction Group, LLC ("LCG"). More specifically, the Complaint alleged that the Respondent's actions violated the Code as follows:

> At the July 16, 2020 Marlboro Township Council Meeting Councilman Cantor voted to award contracts to Lucas Construction [i.e., LCG]. The Township Council meetings have all the information. [¶] Mr. Cantor is in business with the Principal of Lucas Construction. The companies [sic] name is Lima Charlie Construction. These votes are a clear violation of the Marlboro's Code of Ethics.

Also appended to the Complaint were various documents and a copy of the "Legislative Minutes" from the Marlboro Township Town Council's ("MTTC") July 16, 2020, public meeting.

The Respondent was thereafter served with a copy of the Complaint and he was asked to respond. Following the Respondent's submission of the January 7, 2022 letter to us, on January 24, 2022, the Respondent appeared before the Board *pro se*.[10] The Respondent first noted that he had served on the MTTC for 17 years, that he had never had an ethics complaint brought against him, and, that the Complaint was filed during "election season." He further advised the Board that *prior* to the filing of the Complaint the Respondent had obtained an "opinion letter" from a "third-party lawyer" for the purpose of "mak[ing] sure that I was above and beyond reproach for any type of ethics concern or conflicts of interest." The Respondent further testified that it was his understanding that "there was no conflict of interest nor was there an ethics violation" associated with his actions as an MTTC member and more particularly as that related to LCG.

As it specifically related to the actions alleged by the Complainant which pertained to the July 16, 2020 MTTC meeting, the Respondent stated:

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[10] Following this appearance, the Respondent subsequently hired legal counsel.

> There was one such situation where there was an award of a contract, which is the alleged ethics violation, where I voted for it. It was on the consent agenda.[[11]] I didn't realize that actually was buried in the consent agenda and unfortunately I did vote for it, fortunately or unfortunately I did vote for it. Ultimately it wouldn't have mattered if I voted for it, because it was subject to the low bid process for the local purchasing of contracts here in the State of New Jersey. So, even if I didn't vote for it, the situation wouldn't changed.

The Respondent further testified that he was "not involved" with the bidding process and that he did not receive "any compensation" or "gain financially" from LCG nor was he employed by LCG. He also told the Board that he never "engaged in any type of conversation with my fellow council members to try to obtain votes to sway contracts to go that way." Finally, the Respondent stated that LCG had been "working in Marlboro Township even before I was on council" and that they had in fact been working for Marlboro for "decades."[12]

The Respondent also confirmed that he had in fact formed an entity (Lima Charlie Corporation, Inc. or "LCC") in December of 2018 that "[o]ur first job was [in] 2019." The Respondent further characterized and distinguished LCC from LCG as follows:

> "I feel very comfortable with the fact that I don't benefit financially from Lucas Construction Group. It is a completely different entity from the entity that I own and work for. It is, there's no, there's no integration there. So, I have my own work force. I don't—he has his own work force. So, it's, and he has an EIN number, entity ID number from the federal government, I have my own entity ID, so it's completely separate organizations. Lucas Construction Group is his organization. I do not benefit one iota from that organization. That's his. That's, and they working in Marlboro Township even before I was on council [i.e., MTTC], so they've been here for decades. Their father started the predecessor business, so they've been here forever. So, there's no, there's no

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[11] A "consent agenda" procedure is described as follows:

> A "consent agenda" is "[a] list of business awaiting a deliberative assembly's vote that is not expected to be substantially opposed and is therefore scheduled for a vote without debate, or for automatic adoption unless a member objects." In other words, it allows "[a]ll items [to] be passed with a single motion, no discussion."
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> [Nicholas Johnson, *Open Meetings and Closed Minds: Another Road to the Mountaintop*, 53 *Drake L. Rev.* 11, 53 n.50 (2004) (citation omitted) (quotation omitted) (alterations in original).]

Indeed, a "consent agenda" is a rather swift procedure in that a "motion to approve a consent agenda, although it can be an efficient procedure to dispose of noncontroversial items, can also be used to sweep a lot of decisions into one vote faster than an audience member or reporter can bat an eye." *Id.* at 25 (footnotes omitted).

[12] The Respondent indicated that this was the case as well as far as LCG's involvement vis-à-vis Marlboro as to "emergency infrastructure repairs" which LCG had been performing for about "20 years or so."

financial gain for me. There was nothing for me to gain from relationship with Lucas at all, Lucas Construction Group."

Importantly, there was no evidence presented nor any allegation made in this case that LCC did any business with the Township of Marlboro nor that it had ever been awarded a contract to do work for Marlboro of any kind nor that it even bid on any work for Marlboro Township.

Also testifying for the Respondent on January 24, 2022, was former MTTC member Carol Mazzola. Ms. Mazzola testified that she knew the Respondent for 12 years and that she felt that the Respondent was a person of "high moral character."

On January 31, 2022, the Board then heard testimony from a witness testifying on behalf of the Complainant; Daniel Matarese. Mr. Matarese offered—as evidence in support of the Complaint—eight (8) exhibits.

He first offered an MTTC agenda which attached Resolution Nos. 2018-126 and 2018-128 which were before the MTTC for its March 1, 2018, public meeting.[13] Both of these resolutions pertained to potential work that LCG might perform in Marlboro Township for "emergency services"[14] and these resolutions were part of the MTTC's "consent agenda."

Second, Mr. Matarese offered the MTTC's agenda for its December 18, 2018 public meeting as well as Resolution No. 2018-383.[15]

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[13] These resolutions were marked as "Exhibit 1" by the Board.

[14] The testimony in this matter was clear that contracts for "emergency services" were put in place in advance and in anticipation of such emergencies. Apparently, as it relates to this matter, water service in Marlboro was a recurring and common problem which required such services and instead of contracting for such services after an emergency occurred, the Township would contract for such services *before* any such emergency occurred. The evidence indicated that the same bidding procedures were used for both types of services, thus, we similarly analyzed the evidence before us whether the given contract was for emergency or non-emergency services.

[15] This document was marked as "Exhibit 2" by the Board.

Third, Mr. Matarese offered a document from the New Jersey State Treasury which stated that LCC had been formed on December 18, 2018 and that a "Lionel Lucas" had been named as the registered agent[16] of this entity.[17]

Fourth, Mr. Matarese offered an MTTC agenda for its February 21, 2019 public meeting which attached Resolution No. 2019-101. This resolution pertained to "emergency services" to be performed by LCG.[18]

Fifth, Mr. Matarese offered an MTTC agenda for its March 5, 2020 public meeting which attached Resolution No. 2020-094. This resolution pertained to a "contract renewal" as it related to LCG.[19]

Sixth, Mr. Matarese offered an MTTC agenda for its July 16, 2020 public meeting which attached Resolution No. 2020-196. This resolution pertained to emergency services to be performed by LCG.[20]

Seventh, Mr. Matarese offered a proposal given by LCC to the County of Monmouth for "road maintenance repair work."[21] Mr. Matarese offered this exhibit to question the relationship of LCG vis-à-vis LCC particularly as it respected LCC's incorporation in the proposal of construction equipment—as part of its bid—which was owned by LCG.

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[16] By statute, a "registered agent" is a person authorized to accept service of process on behalf of a corporation. *N.J.S.A.* § 14A:4-2(1).

[17] This document was marked as "Exhibit 3" by the Board.

[18] This document was marked as "Exhibit 4" by the Board.

[19] This document was marked as "Exhibit 5" by the Board.

[20] This document was marked as "Exhibit 6" by the Board.

[21] This document was marked as "Exhibit 7" by the Board.

Finally, the eighth exhibit offered by Mr. Matarese was an MTTC agenda for its August 15, 2019 public meeting which attached Resolution No. 2020-242. This resolution pertained to a "contract renewal" as to LCG.[22]

At the conclusion of Mr. Matarese's testimony, the Complainant testified. The Complainant spoke briefly and he lauded the Respondent for his service in the military however, "[w]e don't applaud the ethics violations." The Complainant further told the Board that the testimony and exhibits offered by Mr. Matarese were meant to supplement his allegations as set forth in the Complaint. He furthermore told the Board that he felt that the documents supplied by Mr. Matarese demonstrated a "pattern" of a "disregard for the public trust."

When directly asked by the Board's Chairperson if the Complainant could specifically identify a financial gain that was had by the Respondent for his actions, the Complainant responded by saying: "I think the public trust is violated and usually people when they get in a position of power for so long they forget that and it's usually because of financial gain." However, importantly, no definitive proof of financial gain to the Respondent was provided by the Complainant.

Additionally, when the Complainant was asked about "emergency services" contracts that were awarded to LCG vis-à-vis the "low bidding process," the Complainant claimed that the awarding of these kinds of contracts is "not always [to] the low bidder."

The Board next heard testimony on March 28, 2022, when it took testimony from the Township Clerk, Suzanne Branagan. Ms. Branagan discussed the organization and preparation of the MTTC agendas and she confirmed that the MTTC has "no part" of the bidding process under which contracts are awarded to the lowest bidder. She testified that the entire bidding process is

[22] This document was marked as "Exhibit 8" by the Board.

handled by Marlboro's business administrator. Ms. Branagan also testified that she attends every MTTC meeting and that she had never seen a situation where the MTTC had declined to award a contract to the successful bidder in favor of another vendor who was *not* the lowest qualified bidder deeming that that would be "totally illegal."

Ms. Branagan also clarified what appears to council members on the MTTC agenda and particularly the "consent agenda" in that it "says what [a line item] it's for, but it doesn't say who it's for. You know, like who the vendor is." She added that in terms of discussions surrounding a "consent agenda" that there is "usually none."

The last witness to testify in this matter was Marlboro Township's Business Administrator, Jon Capp. Mr. Capp testified that he had been the business administrator for 12 years. Mr. Capp also discussed his role vis-à-vis the awarding of public contracts in terms of altering or influencing contract awards and that the outcome of the bidding process could not be affected. He testified:

> "There's nothing on, there's nothing that gets to an agenda that would change the outcome of the bid. The bid evaluation happens in my office and I'm responsible for that. I make a recommendation. The council members at that point are, they're not amending it or changing it. It's really up or down whether it appears on consent or not on consent."

Mr. Capp made it clear that the Town Council is unable to override the public bidding process and that the MTTC is "not involved" in the process.

He later added that he could not "remember a time where a council member has voted an award of public bid down. That can cause all kinds of problems, if I'm not able to award the bid to the lowest responsible bidder. But I can't remember an occasion." Importantly, Mr. Capp added that even the "emergency contracts" are still awarded to the "lowest responsible bidder" and that the selection of emergency vendors is not arbitrary and in fact, they are procured under the "same terms" as non-emergency contracts.

As part of his duties, Mr. Capp stated that it was also his job to field questions from council members prior to a meeting and that included instances where the council member may have had a conflict with the idea being that the council member may have to abstain or recuse him or herself from some form of legislative action. As it related to the Respondent, Mr. Capp testified that at one point the Respondent "would get to me first, is there anything on this agenda that I should be aware of. And I understood him to mean specifically items involving Lucas Construction Company."

At some point, an issue had been raised, Mr. Capp explained, as to LCG by way of an Open Public Meetings Act request. At that point Mr. Capp consulted with the township attorney and a decision was made to obtain an opinion from an "independent attorney." However, even prior to that attorney issuing an opinion letter, Mr. Capp testified that precautions were taken to ensure that no conflict would take place. He testified:

> "I think once we became aware of, again, what might be perceived as a conflict, we started making sure that the council president was aware. I was aware that there was this item that could appear on an agenda that could, where a potential conflict could be perceived. So at that point, not as a result of the report [i.e., the opinion letter], but at that point we started, I would say, probably moving the items involving Lucas Construction off of the consent agenda to assure they had a separate vote each time."

Mr. Capp did not recall the exact time frame when this procedure was implemented but he stated that it had been done "[s]ometime in the last couple of years." Furthermore, Mr. Capp added that "once this matter was brought to light, he [i.e., the Respondent] did not vote on these [matters pertaining to LCG] any longer." Mr. Capp also stated that once the procedure pertaining to the Respondent was in place that the Respondent was "completely cooperative" in implementing it. The witness also confirmed that for at least his tenure (i.e., 12 years), that LCG had been rendering services to Marlboro Township.

### *B. Summary Of The Allegations Set Forth In The Complaint*

The Complaint, dated October 25, 2021, accuses the Respondent of violating the following subsections of Article V(B) of the Code: (2), (3), (4), (5), and, (6). In turn, each subsection provides that neither an officer[23] or employee of the Township of Marlboro shall do the following:

> (2) No officer or employee shall use or attempt to use his or her official position to secure unwarranted privileges or advantages for himself or others.[[24]]
>
> (3) No officer or employee shall act in his or her official capacity in any matter where he or she, a member of his or her family or any business organization in which he or she has an interest has a direct or indirect financial or personal involvement that might reasonably be expected to impair his or her objectivity, independence or judgment.[[25]]
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> (4) No officer or employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his or her independence of judgment in the exercise of his or her official duties.[[26]]
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> (5) No officer or employee, member of his or her family or any business organization in which he or she has an interest shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing the officer or employee, directly or indirectly, in the discharge of his or her official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the officer has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the officer in the discharge of his or her official duties.[[27]]
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> (6) No officer or employee shall use or allow to be used his or her public office or employment or any information not generally available to the members of the public which he or she receives or acquires in the course of and by reason of his or her office or employment for the purpose of securing financial gain for himself or herself, any member of his or her family or any business organization with which he or she is associated.[[28]]

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[23] For purposes of this opinion, the Respondent is an "officer" of the Township of Marlboro. *See* Code, Art. IV(A).

[24] The corresponding provision in the LGEL, upon which the Code is based upon, is found at *N.J.S.A.* 40A:9-22.5(c).

[25] The corresponding provision in the LGEL is found at *N.J.S.A.* 40A:9-22.5(d).

[26] The corresponding provision in the LGEL is found at *N.J.S.A.* 40A:9-22.5(e).

[27] The corresponding provision in the LGEL is found at *N.J.S.A.* 40A:9-22.5(f).

[28] The corresponding provision in the LGEL is found at *N.J.S.A.* 40A:9-22.5(g).

### *C. Standard Of Review*

The following standards are applied to the various LGEL provisions which are in play in this matter.

#### ***(i) Claims Brought Under Subsection (c)***

*N.J.S.A.* 40A:9-22.5(c) provides:

> No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others.

In applying this provision, our courts have found that each case is fact specific. *See Wvzykowski v. Rizas*, 132 *N.J.* 509, 523 (1993); *Van Itallie v. Franklin Lakes*, 28 *N.J.* 258, 268 (1958). An "unwarranted" privilege or advantage, within the purview of section (c), "would be one that is unjustified or unauthorized, one that would permit the municipal official to obtain something otherwise not available to the public at large." *IMO Zisa*, 385 *N.J. Super.* 188, 196 (App. Div. 2006).

In fact, our State Supreme Court has recognized four types of situations that require disqualification and thus violate the statute: (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 (quotation omitted).

Municipal officials must therefore "'avoid conflicting interests that convey the perception that a personal rather than the public interest might affect decision-making on matters of concern. Officials must be free of even the potential for entangling interests that will erode public trust in government actions.'" *Randolph v. City of Brigantine Planning Bd.*, 405 *N.J. Super.* 215, 226-27 (App. Div. 2009) (quotation omitted). *See also Shapiro v. Mertz*, 368 *N.J. Super.* 46, 53 (App. Div. 2004) (stating that the touchstone inquiry is whether the alleged conflict is likely to tempt the official to depart from his sworn public duty); *Gunther v. Planning Bd. Of Borough of Bay Head*, 335 *N.J. Super.* 452, 460 (Law Div. 2000) (same).

Our courts have explained the "public perception" analysis as follows. In *Mondsini v. Local Finance Board*, 458 *N.J. Super.* 290 (App. Div. 2019), the court stated:

> Much of the case law spawned by the LGEL deals with application * * * to specific facts, where the critical issue was whether the public officer or employee was in an actual conflict of interest *or there was an appearance of impropriety.* As we have noted, "[d]etermination of whether a conflict of interest exists must be done on a case-by-case, fact-sensitive basis." [¶] * * * In considering the necessity of disqualification, "[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." It is not necessary to demonstrate actual proof of dishonesty because only the potential for conflict is necessary. Decisions construing *N.J.S.A.* 40A:9-22.5(d)[29] adopt this expansive view, *holding an appearance of impropriety, not an actual conflict of interest, creates a disqualifying situation.*
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> [*Id.* at 300–01 (emphases added) (alterations in original) (citations omitted).]

Counter balancing that thought however, the *Mondsini* court also observed that the LGEL must be applied with "caution" otherwise, every local government would be "'seriously handicapped if every possible interest, no matter how remote and speculative, would serve as a disqualification of an official.'" *Id.* at 307 (quotations omitted). *See also Meyer v. MW Red Bank, LLC*, 401 *N.J. Super.* 482, 492 (App. Div. 2008) (holding that "we recognize that not every interest has the capacity to entice a public official to depart from his sworn duty. For example, a

[29] Interestingly, the court's reference to *N.J.S.A.* 40A:9-22.5(d) is essentially a reference to the provision in our Code found at Article V(B)(3).

"remote and speculative interest will not be held to disqualify the official." (citation omitted) (quotation omitted)).

Indeed, the *Mondsini* court further cautioned: "To the extent this dicta suggests the mere public perception that an official used his office to secure an unwarranted privilege or advantage is sufficient proof he or she violated subsection (c), we disapprove it." 458 *N.J. Super.* at 303. In fact, the *Mondsini* court went further and interpreted Subsection (c) as follows: "As such, the mere public perception of impropriety does not violate subsection (c); *a violation requires proof that the public official intended to use his or her office for a specific purpose*." *Id.* at 305 (emphasis added).

In other words, the test under this Subsection (c) is as follows:

> As a result, based on subsection (c)'s plain and unambiguous language, we conclude that a public official or employee only violates this provision of the LGEL if she uses or attempts to use her official position with the intent to secure unwarranted advantages or privileges for himself or another.
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> [*Ibid. Accord Cosby-Hurling v. Local Finance Bd.*, 2019 *WL* 254544, at *4 (App. Div. 2019).]

***(ii) Claims Brought Under Subsection (d)***

*N.J.S.A.* 40A:9-22.5(d) provides that:

> 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.

In determining whether a violation has occurred under *N.J.S.A.* 40A:9-22.5(d) our courts essentially apply the same analysis as they do under *N.J.S.A.* 40A:9-22.5(c). *Grabowsky v. Twp. of Montclair*, 221 *N.J.* 536, 553 (2015). However, our courts "have rarely recognized a conflict of interest arising from a public employee's alleged direct personal interest or personal involvement in a matter when there is no prospect of financial advantage to the public official or his or her family or friends." *Id.* at 555. In fact, our State Supreme Court has similarly found that no violation of Subsection (d) occurs where a relative or friend "might benefit" from a particular action taken by the government office in question. *Id.* at 557. *Scull v. Loc. Fin. Bd.*, 2014 *WL* 2440783, at *2 (App. Div. 2014) (holding that the "possible" conflicting interest is insufficient to trigger a violation under Subsection (d)); *Million Bucks, Inc. v. Borough of Seaside Park Zoning Bd. Of Adjustment*, 2009 *WL* 3762702, at*7 (App. Div. 2009) (noting that local governments "would be seriously handicapped if every possible interest, no matter how remote and speculative, would serve as a disqualification of an official.").

Therefore, disqualification requires more than "some remote and nebulous interest." *See also Kash v. Mayor and Council of the Borough of Freehold*, 2017 *WL* 1839221, at *5 (App. Div. 2017) (holding that interests that are "speculative" will not trigger a violation of Subsection (d)). Thus, it is not surprising that our courts approach alleged violations of Subsection (d) with "caution." *See Matter Of Local Ethics Bd. Decisions*, 2020 *WL* 4150716, at *7 (App. Div. 2020) (holding that courts interpret Subsection (d) with "'caution'" because of the possible restrictive nature on governmental operations if every possible interest implemented a violation of the LGEL); *Munico Assocs., L.P. v. Inserra Supermarkets, Inc.*, 2016 *WL* 4395678, at *5 (App. Div. 2016) (same).

The touchstone of a Subsection (d) case therefore comes down to whether the government officer had an "interest" that might reasonably be expected to impair their objectivity or independence of judgment. *Piscitelli v. City of Garfield Zoning Bd. Of Adjustment*, 237 *N.J.* 333, 351 (2019); *Hughes v. Monmouth Univ.*, 394 *N.J. Super.* 207, 224 (Law Div. 2006).

***(iii) Claims Brought Under Subsection (e)***

*N.J.S.A.* 40A:9-22.5(e) provides that:

> No local government officer or employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties.

In interpreting this provision, our courts have held that in determining whether there is an appearance of impropriety that the analysis must be as follows:

> The Court's manifest concern about the appearance of impropriety, however, is directed to "something more than a fanciful possibility." The appearance of impropriety "must have some reasonable basis." Moreover, the Court's analysis of actual or apparent conflict of interest does not take place "in a vacuum," but is, instead, highly fact specific. [¶] *In assessing the reasonable basis for the appearance of impropriety, the Court adopts the perspective of an informed citizen.* Within that framework we must now undertake a careful consideration of the facts of petitioners' case to determine if there is a reasonable likelihood for an actual conflict of interest or if petitioners' situation would create an appearance of impropriety in the mind of a reasonable and informed citizen.

[*Matter of Opinion No. 653 of Advisory Comm. on Pro. Ethics*, 132 *N.J.* 124, 132–33 (1993) (quotations omitted) (citations omitted) (emphasis added).]

***(iv) Claims Brought Under Subsection (f)***

*N.J.S.A.* 40A:9-22.5(f) provides that:

> No local government officer or employee, member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the local government officer has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the local government officer in the discharge of his official duties.

Claims brought under Subsection (f) are accorded to the statute's "plain language." *Mondsini, supra*, 458 *N.J. Super.* at 302.

***(v) Claims Brought Under Subsection (g)***

*N.J.S.A.* 40A:9-22.5(g) provides that:

> No local government officer or employee shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated.

Claims brought under Subsection (g) pertain to the government official's use of "insider information." *Mondsini, supra*, 458 *N.J. Super.* at 302. *See also VNO 1105 State Hwy. 36, L.L.C. v. Township Of Hazlet*, 2021 *WL* 4256586, at *7 (App. Div. 2021).

A determination by this Board of a violation of any of the above Code provisions mandates a fine between $100 and $500, *N.J.S.A.* 40A:9-22.10,[30] and it may also permit further disciplinary action including removal, suspension, or demotion of the officer or employee. *N.J.S.A.* 40A:9-22.11.[31]

### *D. Summary Dismissal Of Claims Under (4), (5) and (6)*

As an initial matter, the Board will summarily dismiss the allegations brought under Subsections (4), (5), and, (6) of the Code. The Board was given no evidence to substantiate any allegation that the Respondent undertook any "employment or service" in contemplation of Subsection (4); nor that the Respondent or any business organization in which he had a direct or indirect interest solicited or accepted any "gift, favor, loan, political contribution, service, promise of future employment or other thing of value" in exchange for influencing the Respondent, in contemplation of Subsection (5); or, that the Respondent used his "office" or any

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[30] *N.J.S.A.* 40A:9-22.10 provides, in pertinent part:

> a. An *appointed* local government officer or employee found guilty by * * * [a] municipal ethics board of the violation of any provision of * * * [the LGEL] or of any code of ethics in effect * * *, shall be fined not less than $100.00 nor more than $500.00 * * *.
> b. An *elected* local government officer or employee found guilty by [a] * * * municipal ethics board of the violation of any provision of * * * [the LGEL] or of any code of ethics in effect * * *, shall be fined not less than $100.00 nor more than $500.00 * * *.

(emphases added).

[31] *N.J.S.A.* 40A:9-22.11 provides, in pertinent part:

> The finding by [a] * * * municipal ethics board that an appointed local government officer or employee is guilty of the violation of the provisions of this act, or of any code of ethics in effect pursuant to this act, shall be sufficient cause for his removal, suspension, demotion or other disciplinary action by the officer or agency having the power of removal or discipline.

"information not generally available to members of the public" for the purpose of procuring for himself a financial gain.

As such, the Board will rule—based upon the allegations made in the Complaint—whether the Respondent violated Subsections (2) and/or (3) of the Code. In other words, we deem that only the provisions of *N.J.S.A.* 40A:9-22.5(c) and (d) are at issue here for resolution of this matter by this Board.

***E. Legal Conclusions***

***Alleged Violation Of N.J.S.A. 40A:9-22.5(c)***

As we stated above, our review of the allegations brought under this statutory language asks whether the Respondent received an unjustified or unauthorized advantage by or through his actions. Our courts instruct us that the "unjustified and/or unauthorized advantage" can take the form of a *direct or indirect financial gain*, or a *direct or indirect personal interest*. We are also mindful that we review the Respondent's actions to determine whether there is an *appearance of impropriety*[32] and we undertake that analysis from the viewpoint of an "informed" citizen.[33] Finally, we acknowledge the "caution" that our courts have voiced in adjudicating alleged Subsection (c) violations and we harken back to the standard espoused in *Mondsini* which summed up our analysis as follows: "[T]he mere public perception of impropriety does not

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[32] Although the courts in LGEL matters will apply an "appearance of impropriety" analysis, we are mindful of the complications and criticisms of the "appearance of impropriety" doctrine in other ethical settings. *See Strada v. Sussex County Board of Chosen Freeholders*, 2019 *WL* 3187924, at *2 (App. Div. 2019) (noting criticism of the rule). For example, the "prohibition against the appearance of impropriety for attorneys is no longer a valid consideration." *State v. Faulcon*, 462 *N.J. Super.* 250, 256 (App. Div. 2020) (citation omitted). *See also In re Supreme Court Advisory Comm. on Prof'l Ethics Op. No. 697*, 188 *N.J.* 549, 562-63 (2006) (discussing the 2004 amendments to the New Jersey Rules of Professional Conduct and explaining that the appearance of impropriety is no longer considered when determining if a conflict of interest exists). Commentators have likewise advocated for the abolishment of the use of the doctrine in ethics cases. *See, e.g.*, Edward C. Brewer, III, *Some Thoughts On The Process Of Making Ethics Rules, Including How To Make The "Appearance Of Impropriety" Disappear*, 39 Idaho L. Rev. 321 (2003).

[33] *See Matter Of Opinion No. 653 of Advisory Comm. On Prof.* Ethics, 132 *N.J.* 124, 133 (1993); *Randolph v. City of Brigantine Planning Bd.*, 405 *N.J. Super.* 215, 230-31 (App. Div. 2009); In *Re Bator*, 395 *N.J. Super.* 120, 127 (App. Div. 2007).

violate subsection (c); a violation requires proof that the public official intended to use his or her office for a specific purpose." 458 *N.J. Super.* at 305.

Our review of the evidence indicates that the Respondent did not intend use his office in such a manner.

First, at the outset we rule out any financial gain (direct or indirect) which was allegedly incurred by the Respondent. No evidence of any financial gain was presented to us and we will not infer nor impute any such gain without proof of same. We also add that there was no allegation that the Respondent's construction business (i.e., LCC) derived any financial gain or interest including any contract for services with Marlboro Township.

Second, as to any direct or indirect personal interest, we do not perceive any such interest. The testimony before the Board was that LCG is a longtime vendor with the Respondent himself testifying that LCG had been doing work for Marlboro before he ever became a member of the MTTC. The testimony of Marlboro's Business Administrator seemed to corroborate this testimony to a large extent. Indeed, there was no evidence presented to us to the contrary. Furthermore, we find it significant as to the context of how the Respondent's actions occurred vis-à-vis LCG.

The evidence is clear that when LCG was presented to the MTTC that LCG had already been recognized as the "lowest qualified bidder" for a particular public contract which would include contracting for "emergency" services. This process was handled exclusively by Marlboro's Business Administrator and not by the Respondent nor the MTTC for that matter. Both the Business Administrator and Township Clerk testified that neither the Respondent nor the MTTC had "any" involvement in the public bidding process. Thus, neither the Respondent (nor any members of the MTTC for that matter) were able to alter, influence, or sway the determination of the "lowest responsible bidder" in any way, fashion, or form. Indeed, the law in the area of public contracts has safeguards to prevent influence as a "public contract *must* 'be awarded to the lowest responsible bidder.'" *Palamar Constr., Inc. v. Pennsauken Township*, 196 *N.J. Super.* 241, 246 (App. Div. 1983) (citing *N.J.S.A.* 40A:11-6.1) (emphasis added). Indeed, the testimony before us was that if the MTTC attempted to bypass awarding a contract to the "lowest responsible bidder" that such an action would be "illegal" and problematic.

Thus, for our purposes we perceive the contracts to LCG to have been "awarded" via the competitive bidding process and not by any action or effort on the part of the Respondent to have "intended to use his or her office for a specific purpose" which here, would have been to "award" a contract or contracts to LCG.

We believe that an "informed" citizen would find as such. *In re Bator*, 395 *N.J. Super.* 120, 127 (App. Div. 2007) (noting that this Board would consider what a "well-informed member of the public" might view of the potential conflict (quotation omitted)).

Furthermore, the *manner* in which the contracts with LCG came before the MTTC were by way of a "consent agenda." We deem that to be significant and enlightening and we note that sometimes the portions of the MTTC's agendas—as it specifically relates to the "consent" portion of the agenda—lacked detail as to the identity of the vendors. Furthermore, these "consent agendas" included numerous items for consideration and these agendas passed—according to the evidence presented to us—with no discussion whatsoever by the MTTC ever taking place as to any of the items.[34]

[34] We glean (but do not find) from the testimony presented to us that MTTC members may, at times, have overlooked or even had been unaware of all of the details as to the items on the "consent agendas" which we recommend might be the subject of consideration for the Town Council to avoid such a practice.

We cannot discern how the Respondent—under these unique circumstances—could have used or attempted to use his position as an MTTC member "with the intent to secure unwarranted advantages or privileges for himself or another." In essence, the matters at hand would have passed regardless of the Respondent's affirmative vote (and/or his objection or abstention and/or recusal) since the competitive bidding laws *required* such a result. Furthermore, the Respondent had no ability to sway or influence the awarding of the contracts to LCG whether they were for "emergency"[35] services or not since these matters were presented to the MTTC via a "consent agenda" which regularly and recurrently passed in an expeditious manner with no discussion or commentary at all.

We also find, as it is our duty to do so, that an "informed" citizen would reach the same conclusion. *State v. Jackson*, 2019 *WL* 2068540, at *5 (App. Div. 2019) (noting that an "informed citizen" has "full knowledge of the facts" (quotation omitted)).

Nevertheless, despite our finding, we feel it necessary to comment on the events that transpired in this matter. Although we do not believe that they rise to the level of an ethics violation in contravention to our Code and/or Subsection (c), we believe that they demonstrate a lack of awareness and/or attentiveness that could have easily been avoided by cautious reflection and perhaps even educational training in basic government ethics rules. The Respondent merely had to recuse himself from any "consent agenda" items involving LCG.[36] Furthermore, although we understand the nature, expense and effort in assembling the "consent agenda" for each MTTC

[35] To be clear, the testimony of Marlboro's Business Administrator made it clear that even if LCG was awarded a contract to perform "emergency" services, that in fact they still had to qualify as the "lowest responsible bidder."

[36] We understand, and do not take lightly, the amount of time and effort that goes into the preparation and organization of a governing body resolution (and subsequent public meeting) and our dicta should not be taken to suggest that the MTTC nor its members operate in a haphazard or reckless manner. Nevertheless, we recommend that municipal officials be trained and educated as to the possible need to recuse and/or abstain in certain circumstances.

meeting, we believe that at a minimum the name of any vendor being awarded a contract should be shown on the agenda.

***Alleged Violation Of N.J.S.A. 40A:9-22.5(d)***

Our courts have instructed us—as in cases brought under Subsection (c)—that the analysis under Subsection (d) is very similar. Subsection (d) embodies the "long-standing common law principle that a public official is disqualified from acting in a matter in which she or he has a conflicting interest that would interfere with his or her public duty." *Scull v. Loc. Fin. Bd.*, 2014 *WL* 2440783, at *2 (App. Div. 2014) (citation omitted). *See also Scoblink-O'Neill v. Local Finance Bd.*, 2014 *WL* 6802452, at * 3 (App. Div. 2014) (same).

As we stated above, the interest must not be "remote" nor "speculative" and our courts have cautioned that interpretations of Subsection (d) must be mindful that not every interest or "involvement" will result in a violation of this Subsection.

At the outset and as per the plain language of this Subsection, we note that no member of the Respondent's "immediate family" is involved here. Thus, there is no consideration given as to whether a benefit was conferred on an immediate family member of the Respondent.

Here, the Respondent testified at length that he had no financial interest in LCG nor was he an employee of LCG and, that he furthermore did not even perform the same kind of work as LCG. Thus, the awarding of any contract to LCG (which as we discussed above was not "awarded" by either the Respondent or the MTTC) did not financially (either directly or indirectly) benefit the Respondent.

That would leave the issue of whether a "business organization in which he [i.e., the Respondent] has an interest" is involved in this matter and if so, whether that organization would have had any "involvement" in the matter. Simply put, the evidence does not support any such finding. There was absolutely no evidence offered by the Complainant that show that LCC obtained any benefit whatsoever when LCG was awarded any contract for services to be performed for Marlboro Township. The Respondent testified that LCC did not do any business with Marlboro Township nor had it ever done so. Thus, by the evidence presented to us, it was clear that LCC would not derive any benefit whatsoever from LCG being awarded any contract by Marlboro Township.

As we have said throughout this opinion, LCG was awarded various contracts over the years because it was the "lowest responsible bidder" and not because of discretionary consideration by the MTTC. Indeed, LCG—even after the departure of the Respondent from office—continues to do business with Marlboro Township.[37]

Along these lines, we found the court's decision in *Pinelands Preservation Alliance v. Burlington County Bd. Of Chosen Freeholders*, 2021 WL 4997797 (App. Div. 2021) (per curiam), instructive. In *Pinelands Preservation* at issue were the affirmative two votes from members of the Burlington Board Of Chosen Freeholders. The two votes had authorized the county engineer to approve an application to close two county roads that would be affected by a New Jersey Natural Gas pipeline through Burlington County. The LGEL claim in that case was premised on the fact that the two votes were "decisive" and that members' employer "had urged in another fora the approval of NJNG's pipeline." *Id.* at *1.

The court rejected the LGEL claim alleging a conflict of interest by noting that "it is important to recognize that the decision to allow NJNG to proceed with the pipeline was not at issue in the adoption of the resolution challenged in this action. The pipeline had received all

[37] At the MTTC's February 24, 2022 public meeting an item shown on the "consent agenda" simply indicated an awarding of a contract for "Emergency Expenditures for Water Main Repairs" and this item referenced Resolution No. 2022-073. Indeed, this Resolution authorized a contract to LCG for such emergency services. Similarly, at the MTTC's March 24, 2022 public meeting, an item shown on the "consent agenda" again referenced the awarding of a contract to LCG for "Emergency Water Main Repair Services." *See* Resolution No. 2022-100.

necessary governmental approvals * * *." *Ibid.* In other words, the board there—which had received the alleged tainted two "decisive" votes—"was not deciding whether the pipeline construction would proceed * * *." *Id.* at *2. Thus, the court found no LGEL violation because "the resolution's adoption did not further the construction [of the pipeline], either directly or indirectly." *Id.* at *4.

As it relates to this matter, the trial judge's opinion in *Pinelands Preservation*—which was affirmed by the Appellate Division—found that "[n]either an affirmative vote nor a denial would have affected the actual construction of the * * * [pipeline]." *Id.* at 3.

We similarly discern that proposition here. LCG was awarded its contract as a result of it being the "lowest responsible bidder" and not as the result of any evaluation by the MTTC (nor the Respondent) and as Marlboro's Business Administrator readily admitted in response to what would happen if the MTTC voted down an award of a contract to the "lowest responsible bidder," "[t]hat can cause all kinds of problems * * *."

We do not see—nor do we envision—that an "informed" citizen would view this situation any differently.

Here, we also draw on the "caution" that the *Mondsini* court spoke about when it warned that a conflicts analysis should be reasonably applied because municipalities would be "'seriously handicapped if every possible interest, no matter how remote and speculative, would serve as a disqualification of an official.'" 458 *N.J. Super.* at 307 (quotations omitted). Additionally, we note that one leading commentator has echoed this sentiment and opined that in

> smaller municipalities, where the pool of potential officials is smaller, it often happens that almost everyone on a public body has some tie or another to the person appearing before that body. [¶] In smaller municipalities it often occurs that the municipal officials are the same people that run the local businesses. Thus, conflict would appear unavoidable. [¶] In such circumstances, application of the de minimis rule is appropriate and necessary. * * * The ultimate conclusion, then, is that if conflict of interests is a doctrine to be applied literally in every case it would deprive the * * *

[municipality] of the value of participation by local business owners. Under the circumstances, common sense must prevail.[38]

Indeed, our own Code recognizes the above principles and it provides, at Article V(C):

> No officer shall be deemed in conflict with these provisions if, by reason of his or her participation in the enactment of any * * * resolution, no material or monetary gain accrues to him or her as a member of any business * * * or group to any greater extent than any gain could reasonably be expected to accrue to any other member of such business * * * or group.

We do not find that the Respondent violated N.J.S.A. 40A:9-22.5(d) here.

***The July 1, 2021 Opinion Letter***

On July 1, 2021, the Respondent had obtained an "opinion letter" from a law firm whose offices are in Toms River, New Jersey.[39] The Respondent and the Business Administrator had testified that the "opinion letter" followed the Township's receipt of an Open Public Meetings Act request which suggested a possible conflict on the part of the Respondent. Subsequently, the "opinion letter" was then requested and received.[40]

The "opinion letter" reviewed many of the same documents (i.e., MTTC Resolutions) that were produced to the Board by Daniel Matarese as well other resolutions affecting LCG. The "opinion letter" also analyzed the Respondent's actions vis-à-vis Subsection (d) and (e) of

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[38] Michael A. Pane, 34 *N.J. Practice, Local Government Law* § 9:12 (4th ed.).

[39] For future reference, we find it important to remind Marlboro Township officers and employees that the Board is permitted—as per Article X of its Code—to render an advisory opinion. Article X provides:

> X. Advisory opinions. A. An officer or employee of the Township of Marlboro may request and obtain from the Marlboro Township Ethics Board an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the Code of Ethics. B. Advisory opinions shall not be made public except when the Board, by the unanimous vote of all of its members present, directs that the opinion be made public or when the Board by a two-thirds (2/3) vote of all of its members present, determines that disclosure is required in connection with a related or independent investigation. C. Public advisory opinions shall not disclose the name of the officer or employee unless the Board, in directing that the opinion be made public, so determines.

In this instance, the Respondent could have similarly sought an advisory opinion from this Board prior to taking any action but he did not do so.

[40] To be clear, we are aware of the testimony that the Respondent himself did not directly retain or engage the services of the attorney but rather, the "opinion letter" was facilitated via the Township Attorney's office.

the LGEL (i.e., *N.J.S.A.* 40A:9-22.5(c) & (d)) and the author concluded that the Respondent "did not have an actual conflict of interest when voting on the LCG contract awards because he does not have a direct or indirect personal or financial interest in the matters." The author did caution, however, that his analysis was a "close call" and the attorney recommended that the Respondent "refrain in the future from any involvement, direct or indirect, on bids, contracts, awards or projects that involve or could involve LCG."

Here, the Respondent is apparently offering the "opinion letter" as a defense in this matter. Indeed, the Respondent pointed out that he had "abided" by the advice rendered in the "opinion letter" and he had "abstained" from "all votes regarding work being awarded to Lucas Construction Group" following his receipt of the letter.

As to the "advice of counsel" issue[41] raised by the Respondent this defense was outlined in *Kennedy v. Local Fin. Bd.*, 2018 *WL* 1247215 (App. Div. 2018), a case which also involved an alleged violation of *N.J.S.A.* 40A:9-22.5(d). In *Kennedy*, a case brought because the respondent there held "various paid positions in the Ocean Gate Borough government, in addition to his position as mayor," the court held:

> We turn next to [the accused official's] * * * advice-of-counsel defense. We recognized the defense in dictum in *In re Zisa*, 385 *N.J. Super.* 188, 198-99 (App. Div. 2006). Although we held that Zisa's activities did not violate the Ethics Law, we held that even if they did, the Board erred in rejecting Zisa's advice-of-counsel defense. To establish the defense: (1) an officer must receive the advice before taking the questioned action; (2) the officer must make "full disclosure of all pertinent facts and circumstances"; (3) the advisor must "possess[ ] authority or responsibility with regard to ethical issues"; and (4) the officer must "comply with the advice received, including any restrictions it might contain." *Ibid.*

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[41] Obtaining an opinion from legal counsel prior to acting—on the part of the government official—is a relatively common tactic. For example, in *Pinelands Pres. All. v. Burlington Cty. Bd. of Chosen Freeholders*, 2021 *WL* 4997797, at *2 (App. Div. 2021) (per curiam), the court observed—in a case involving an alleged violation of the LGEL where municipal officials voted in favor of a project which benefited their employer—that "[p]rior to the hearing on the resolution, * * * [the voting officials] sought and obtained the advice of counsel that the Local Government Ethics Law would not prohibit their participation" vis-à-vis the subject application. *Id.* at *2. Although the officials were absolved of any wrongdoing under the LGEL, the appellate court noted that the trial judge "declined to decide whether the advice of counsel absolved * * * [the municipal officials] from a penalty for any alleged violation of the Local Government Ethics Law, even if the advice was mistaken." *Id.* at *3. Although no ruling was made as to this issue, it was not summarily dismissed either.

[*Id.* at *2 (footnote omitted) (alteration in original).]

Importantly, the *Kennedy* court also noted that it is not "unreasonable [for the government official] to rely on * * * oral opinion[s]," *id.* at *3, and, the defense "does not directly depend on the reasonableness or correctness of the attorney's advice. It depends instead on the reasonableness of the office-holder's reliance. Although it would be unreasonable to rely upon wildly implausible advice, those instances should be exceedingly rare." *Id.* at *4.

Thus, the *Kennedy* court continued, "an officer should be able to reasonably rely on the advice of an independent attorney responsible for providing it. An officer should not be required to pinpoint ambiguities in the law to justify seeking legal advice in the first place. Rather, it should usually suffice that the officer 'evidenced sensitivity to the issue of a potential conflict ... and sought legal advice.'" *Id.* at *4 (quotation omitted).

In sum, the court found that "[i]n other contexts, courts have concluded that clients should be free to rely in good faith on their attorney's advice. * * * The same holds true for a local governmental official seeking ethics advice." *Id.* at *4.

Of the above factors outlined by *Kennedy*, *supra*, the Respondent fails to satisfy the first element which is obtaining the advice *before* taking the action in question. Here, the very opposite occurred; the Respondent—after being alerted to allegations pertaining to his conduct—obtained an "opinion letter" which concluded that no ethics violations had occurred. Thus, the "opinion letter" was obtained *after* the contested actions took place. That finding would appear to be problematic—if not fatal—to the advice of counsel defense.

Nevertheless, we note that the Respondent did take action when the concern about his actions were brought to his attention. Regardless of whether Marlboro Township's attorney or the Respondent himself solicited the "opinion letter," the advice was sought and from the

Respondent's own admission, he followed the advice and did not deviate from it once he was made aware of the attorney's conclusions.

Although we cannot base our decision on the "advice of counsel" defense for the reasons stated above, we do take note of the Respondent's actions vis-à-vis obtaining the "opinion letter" and that he apparently refrained from any further action pertaining to LCG after he learned of the recommendations set forth in the "opinion letter."

## FINAL RULING

For the foregoing reasons, the MTEB finds that the Complaint filed by John C. Gibardi against former councilman and Respondent, Jeff Cantor, should be dismissed.

Dated: June 29 2022

MARLBORO TOWNSHIP ETHICS BOARD

By:

Lena M. Ackerman, Chairwoman

Liza Conselyea, Board Member

Hassan Elmansoury, M.D.,
Board Member

Iqleen Verdi, Board Member

Carol Cinotta, Board Member

Robyn Wolfe, Board Member