

Introduced by Legislator Mejias at the request of the County Executive

LOCAL LAW NO. 4-2007

A LOCAL LAW to amend the County Government Law of Nassau County and the Administrative Code in relation to ethics and financial disclosure requirements.

BE IT ENACTED by the Nassau County Legislature as follows:

Section 1. Section 2218 of the County Government Law of Nassau County is REPEALED and a new section 2218 is enacted, to read as follows:

§2218. Code of Ethics.

1. Definitions.

“Agency” shall include any agency, Board, bureau, commission, department or other similar entity of the County.

“Appear” shall mean to make a communication in any form, personally or through another person, including, but not limited to, by letter, by telephone, by e-mail or by facsimile, on behalf of a person or entity from whom one receives income or compensation.

“Board” shall mean the Nassau County Board of Ethics.

“County officer or employee” shall include the officers and employees of any agency of the County, as defined herein, in addition to any officer who is appointed, pursuant to law, by the County to serve any other entity unless such person is subject to the Public Officers Law and the oversight of the State Ethics Commission or is otherwise exempt from the local ethics code.

“Financial Interest” shall mean (i) a foreseeable direct or indirect pecuniary or material benefit accruing to a County officer or employee as a result of a financial or business dealing with the County; (ii) an ownership interest in any entity, except a publicly-traded corporation of which the County officer or employee owns less than five

percent of the outstanding stock; or (iii) a position as officer, director, trustee, or partner of an entity. For the purposes of this section, the financial interests of an officer or employee's spouse, domestic partner, minor children and dependents shall be deemed financial interests of such officer or employee; provided, however, that a County officer or employee shall not be deemed to have a financial or other private interest in the employment, by the County, of his or her spouse, domestic partner, minor child or dependent.

“Ministerial act” shall mean an administrative act, including the issuance of a license, permit or other permission by the County, which is carried out in a prescribed manner and which does not involve substantial personal discretion.

“Relative” shall mean mother, father, son, daughter, sister, brother, stepmother, stepfather, stepson, stepdaughter, aunt, uncle, cousins in the first and second degree of consanguinity, domestic partner, mother-in-law, father-in-law, sister-in-law, brother-in-law and grandparents.

2. Conflicts of Interest Prohibited.

a. Except as provided in subdivision twelve of this section, no County officer or employee whether paid or unpaid, shall:

(1) Have a financial interest, except by operation of law, in any business or professional dealings with the County or any agency thereof or a financial interest in any entity which has business or professional dealings with the County.

(2) Participate as attorney, agent, broker, representative or employee in a business or professional transaction with, or lawsuit against, the County or any agency thereof for any person or entity directly or indirectly in any manner whatsoever or fail to ensure that adequate measures are taken to prevent his or her participating in any manner in any such transaction where a law firm or other entity in which such person is an owner, member or employee becomes involved as attorney, agent, broker or representative in such a transaction with, or lawsuit against, the County.

(3) Accept or retain other employment, engage in any business transactions, make or retain any investments, have any financial interest, or engage in other activities that directly or indirectly create a conflict with his or her official duties.

b. A County officer or employee shall not appear before any agency or officer of

the County except on behalf of the County, provided, however, that for County officers or employees serving in an unpaid capacity, this prohibition shall apply only to appearances before the agency served by such officer or employee.

c. No County officer or employee shall receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter that is before the agency served by such officer or employee, or any agency over which he or she has supervisory control or to which he or she has the power to appoint any member, officer or employee.

d. No legislator, during his or her term and for a period of two years from the expiration of the term to which he or she was elected, shall engage in any employment as a lobbyist on behalf of any person, firm, corporation or association doing business with the County.

3. Gifts and Favors.

No officer or employee of the County, whether paid or unpaid, shall accept gifts aggregating to seventy-five dollars or more during a twelve month period, nor solicit any gift of any value, whether in the form of services, loan, thing or promise of any other form, from any one person, firm or corporation which to his or her knowledge is interested directly or indirectly in any manner whatsoever in business or professional dealings with the County or any agency thereof. For purposes of this subdivision, the value of a gift of a ticket or comparable authorization entitling the holder to food, refreshments, entertainment, or any other benefit shall be the face value of the ticket or the cost of entrance to the general public, notwithstanding the fact that part of the cost of attending is a tax-deductible or political contribution.

4. Recusal and Disclosure of Interest.

a. A County officer or employee, whether paid or unpaid, shall promptly recuse himself or herself from acting on any matter before the County in which he or she has (i) any direct or indirect financial or (ii) any other private interest that a reasonable person would perceive to compromise his or her ability to make impartial judgments or take discretionary actions in the best interests of the County.

b. Any County officer or employee who recuses himself or herself pursuant to paragraph (a) of this subdivision shall be required to disclose such recusal in writing to

the Board and the nature of his or her private interest. The Board shall file and retain such disclosure as a public record. The Board may issue an opinion in response to such disclosure, give advice by letter or informal communication, or file the disclosure with no response. Neither the disclosure nor any response by the Board shall be confidential.

5. Disclosure of Confidential Information. No officer or employee of the County, whether paid or unpaid shall disclose confidential information concerning the property, government or affairs of the County or any other confidential information of an official character obtained as a result of County employment except when disclosure is required by law or when such information is otherwise available to the public, nor shall he or she use such information to advance the financial or other private interest of himself or herself or others.

6. Misuse of County resources. No officer or employee of the County shall use the resources of the County in furtherance of his or her business, professional or political interests or activities, or in furtherance of the interests or activities of any outside entity other than pursuant to a County contract with such entity, without the approval of the head of his or her agency and the approval of the Board of Ethics upon a finding by the Board that such activity is in furtherance of the interests of the County.

7. Hiring and supervision of relatives. No officer or employee of the County shall hire or induce others to hire a relative of such officer or employee nor shall any officer or employee of the County directly supervise or evaluate the work of any relative employed by the County except: a) as required by the Civil Service Law or rules promulgated thereunder; b) pursuant to a supervisory arrangement that began prior to the effective date of this subdivision; or c) with the written approval of the Board of Ethics.

In determining whether to approve the request of an officer or employee to hire or supervise a relative, the Board shall consider, among other things, the nature of the relationship at issue and any steps that have been taken to ensure objectivity in any such hiring decision, salary determination, evaluations, recommendations for promotions and increases and other aspects of a supervisory relationship. Neither such request for Board approval nor the determination of the Board shall be confidential. Nothing in this subdivision, nor any approval issued by the Board pursuant to this subdivision, shall relieve an employee of the continuing requirement to exercise his job duties in the best

interests of the County, without giving raises, promotions or other beneficial terms or conditions of employment based on private interests or personal relationships, and the Board may continue to enforce such requirement, as it deems appropriate, whether or not it has approved the hiring or supervision of a relative.

8. Post-employment restrictions.

a. No person who has served as a paid officer or employee of the County shall, within a period of two years after the termination of such service or employment, appear before any Board, agency, officer or employee of the County, except on behalf of the State, or a political subdivision or instrumentality thereof, or in furtherance of the interests of the County with the approval of the Board upon application of a County agency. No person who has served as an unpaid officer or employee of the County shall, within a period of two years after the termination of such service or employment, appear before his or her former agency or the officers or employees thereof, except on behalf of the State, or a political subdivision or instrumentality thereof, or in furtherance of the interests of the County with the approval of the Board upon application of a County agency.

b. No person who has served as a paid or unpaid officer or employee of the County shall receive compensation or render any services in relation to any case, proceeding, application or particular matter which such person was directly concerned with, personally participated in, or actively considered during the period of his or her service or employment, except in furtherance of the interests of the County with the approval of the Board upon application of a County agency. A former officer or employee is also required to ensure that adequate measures are taken to prevent his or her participating in any manner in such particular case, proceeding, application or particular matter if a law firm or other entity in which such person is an owner, member or employee becomes involved with any aspect of such particular case, proceeding, application or particular matter

c. No former paid or unpaid officer or employee of the County shall disclose confidential information concerning the property, government or affairs of the County or any other confidential information of an official character obtained as a result of County employment except when disclosure is required by law or when such information is

otherwise available to the public, nor shall he or she use such information to advance the financial or other private interest of himself or herself or others.

9. Pecuniary interest of officers, employees or agents in execution of contracts prohibited. No officer, employee or agent of the County, whether he or she be such by election, appointment or contract shall directly or indirectly, either on his or her own behalf or for another person or corporation, make or participate in making, including the preparation of specifications or plans for, any contract or agreement in which said officer or employee or agent is interested directly or indirectly as principal or agent or as an officer of or owner of stock in a corporation, nor shall an officer, employee or agent in any way influence the action of any other officer or employee or agent in relation to the making, or fail to recuse him or herself from the discussion and approval process of any County contract or agreement in which he or she has such an interest. In addition to other penalties that may be imposed by the Board as set forth in this Code, if any such officer or employee or agent shall willfully violate the provision of this section, such contract or agreement shall be voidable, and such officer or employee or agent shall be guilty of a misdemeanor and upon conviction thereof shall forfeit his office or employment or agency and shall be further punished by a fine of not more than one thousand dollars or by both such fine and imprisonment. The provisions of this section shall not apply to the making of a contract with the County to serve as a foster parent or to act as a physician for any County department or agency or to any ministerial acts taken by a County officer, employee or agent. Further, the provisions of this section shall not preclude a contractor or a contractor's officers and employees from advocating for or participating in the drafting of extensions, renewals or amendments of its own contract with the County nor preclude a contractor from assisting the County with the drafting of specifications upon request of a County agency.

10. Board of Ethics.

a. There shall be a Board of Ethics consisting of five members, three (3) of whom shall be appointed by the County Executive, subject to the confirmation of the County Legislature, all of whom shall reside in the County and who shall serve without compensation, and the County Attorney and another member who shall be appointed by the County Executive. A majority of such members shall not be officers or employees of

the County or any municipality. The members of the Board shall elect a chairperson. Except for the County Attorney, each member shall serve for a term of five (5) years.

b. The Board shall have the authority to investigate complaints of actions in violation of this section. The results of any such investigation may be shared, in the discretion of the Board, with necessary and appropriate County officers and law enforcement officials. In furtherance of this investigatory function, the Board may request that the Commissioner of Investigations use the power and resources of his or her office to assist the Board.

c. The Board also shall render advisory opinions with respect to this section, such opinions to be rendered only to an officer or employee or former officer or employee requesting advice relative to himself or herself, or to the head of a County agency, to the County Executive or to a Legislator. All requests for opinions must be submitted to the Board in writing. The Board shall only disclose and distribute opinions to the person duly requesting it. However, where an advisory opinion is issued and the person who is the subject of the opinion fails to adhere to the guidance of an opinion that has been disclosed to him or her, such violation may, in the discretion of the Board, be disclosed to the head of such person's agency or the necessary and appropriate County officers or law enforcement officials, subject to the provisions in subdivision 11 herein.

Notwithstanding the provisions of this paragraph, all such advisory opinions issued by the Board either prior to or subsequent to the effective date of this local law may be issued with the names and other identifying information redacted and such advisory opinions issued with appropriate redactions shall be made available to the public to the extent the Board determines that identities can be meaningfully protected. Opinions may also be issued and disclosed without the names redacted with the permission of any person who will be identified.

d. In lieu of a formal request for opinion, a County officer or employee may, at any time, submit to the Board an informational letter concerning his or her outside interests or activities whether or not such interests or activities appear to pose an explicit conflict of interest under this Code. Such an informational letter may also be submitted by an officer or employee concerning the outside interests or activities of someone to whom the officer or employee intends to make an offer of County employment or by a

former County officer or employee. The Board shall file and retain such informational letter as a public record. The Board may issue an opinion in response to the informational letter, give advice by letter or informal communication, or file the informational letter with no response. Neither the informational letter nor any response by the Board shall be confidential.

e. The Board shall promulgate its own rules and regulations concerning its forms and procedures and shall maintain appropriate records of its opinions and proceedings.

f. The Board shall administer and enforce the provisions of Section 22-4.3(c) of the Nassau County Administrative Code relating to the filing of financial disclosure forms and financial disclosure requirements by County officials, officers and employees. The Board may delegate to any County officer the duty to distribute, collect and review financial disclosure forms and otherwise administer and enforce section 22-4.3 of the Nassau County Administrative Code relating to financial disclosure; provided, however, that such officer may not impose penalties but may make recommendations to the Board regarding the imposition of penalties for violations of section 22-4.3.

11. Penalties. A violation of any of the provisions of this section shall constitute cause for forfeiture of pay, suspension, imposition of fines of up to \$10,000 per violation or removal from office or employment, as may be imposed by the Board, after providing an opportunity to be heard in a proceeding conducted in accordance with due process. Any person found to have violated any such provision may file with the Board within seven days of such finding a written notice indicating his or her intent to commence a proceeding to review the determination pursuant to article seventy-eight of the civil practice laws and rules. Upon receipt of such notice, the Board shall stay the imposition of any penalty imposed pursuant to this subdivision until the commencement of the article seventy-eight proceeding. Resignation or dismissal from County employment shall not bar the imposition of penalties under this section for violations of the Code that occurred during the period of employment. Penalties may also be imposed under this section on a former employee for violations of the post-employment restrictions. The County Attorney shall provide for appropriate reporting and other services in relation to any such proceeding. Nothing in this section shall limit the imposition of any other penalties, fines and/or other sanctions which may be provided by law or prevent the

County Executive or other appropriate supervisory officer from taking disciplinary action based on the findings of a separate inquiry or investigation.

12. Exemptions.

a. No employee may have any interests or take any action prohibited by subdivisions two through six of this section without the approval of the Board; provided that the provisions of this section shall not prohibit, or require recusal or transactional disclosure as a result of:

(1) An action specifically authorized by statute, rule, or regulation of the State of New York or of the United States.

(2) A ministerial act.

(3) Gifts:

(A) received by the County officer or employee from his or her parent, spouse or child; or

(B) accepted on behalf of the County and transferred to the County.

(4) Gifts or benefits having a reasonable value that are received by a County officer or employee listed in section 11 of the Domestic Relations Law for the solemnization of a marriage by that officer or employee at a place other than his or her normal public place of business or at a time other than his or her normal hours of business.

(5) Awards from charitable organizations.

(6) Receipt of County services or benefits, or use of County facilities, that are generally available on the same terms and conditions to residents or a class of residents in the County.

(7) County officers or employees appearing or practicing before the County or receiving compensation for working on a matter before the County after termination of their County service or employment where they performed only ministerial acts while working for the County or where they are appearing in an official capacity as an officer or employee of another governmental entity.

(8) Former County officers or employees appearing before the County where such appearances are a necessary incident of an otherwise permitted representation or employment in relation to an adjudicative proceeding before an agency or body, or a

court other than an agency, Board or commission of the County.

b. Notwithstanding the foregoing provisions of this section, any textbook authored by a member of the faculty as Nassau Community College may be sold at the college and a royalty or other financial remuneration may be paid to such author, provided the sale of such a faculty authored textbook shall be made in accordance with the rules and regulations promulgated by the Board of Trustees of the college.

c. Notwithstanding the foregoing provisions of this section, a County officer or employee may be an officer, director or trustee of a membership corporation or other nonprofit corporation or association, public authority, or public benefit corporation, or hold a policy making position with such entity, and participate in all activities and transactions of such entity, provided he or she receives no financial remuneration either directly or indirectly from such entity other than expenses actually and necessarily incurred in the performance of his or her duties. Any officer or employee receiving such remuneration for expenses shall, for each year in which such remuneration is received, be required to complete and file the financial disclosure statement promulgated pursuant to the provisions of §22.4.3 of the Administrative Code. A County officer or employee serving a membership corporation or other nonprofit corporation or association pursuant to this paragraph, other than in an ex-officio capacity, shall recuse himself or herself from acting, in his or her capacity as County officer or employee, on any matters directly affecting such entity, shall not use any confidential County information nor, without the approval of the Board, communicate with any County Board, agency, officer or employee in furtherance of the interests of such corporation or entity nor work on any case, proceeding, application or particular matter which such person has been directly concerned with, personally participated in, or actively considered as a County officer or employee.

d. Notwithstanding the foregoing provisions of this section, a person serving the County or any agency thereof without compensation shall not be subject to the prohibitions set forth in subparagraphs one and two of paragraph (a) of subdivision two of this section.

e. Nothing in this section shall be deemed to prohibit an officer or employee of the County from providing services to a local development corporation, public authority,

public benefit corporation, or similar entity as may be determined by the Board, where such services are provided pursuant to law or contract between the County and such entity, and the officer or employee does not receive additional compensation for such services. Such service shall not be deemed to be a private interest of such officer or employee nor to create a conflict with official duties.

f. Notwithstanding the foregoing provisions of this section, an officer or employee of the County shall not be deemed to be in violation of paragraph (a) of subdivision two of this section for making a contract with the County to serve as a foster parent unless the making of such contract is in conflict with the proper discharge of his or her official duties.

g. Notwithstanding any other provision of law, an elected official or a deputy county executive may attend a function given by a civic association or non-profit organization of a charitable or community nature, when invited and paid for by the sponsoring organization, or attend a function of an association composed of representatives of business, labor, professions or the news media, when invited and paid for by the sponsoring organization. In addition, a staff member may be designated to attend any such functions as a representative of an elected official when specifically requested to do so by the elected official.

h. Notwithstanding any other provision of law, an elected official or a deputy county executive may be a guest at ceremonies or functions sponsored or encouraged by the County as a matter of County policy. In addition, a staff member may be designated to attend any such ceremonies or functions as a representative of an elected official when specifically requested to do so by the elected official.

i. Notwithstanding any other provision of law, an officer or employee may be a guest at any ceremony, function, conference or occasion where the attendance of the public servant is in furtherance of the interests of the County, where the attendance has been approved in writing, in advance where practicable or within a reasonable time thereafter, by the County Executive or a deputy county executive, or in the case of the Legislature by the Presiding Officer or the Minority Leader, in the case of all offices of elected officials by said elected official or their designated officer, in the case of the

Office of Legislative Budget Review by the Director of said office and in the case of the Clerk of the Legislature by the Clerk of the Legislature.

§ 2. Section 22-4.2 of the Nassau County Administrative Code is REPEALED.

§ 3. Section 2202 of the County Government Law of Nassau County is REPEALED.

§ 4. The introductory paragraph of subdivision 6 of section 22-4.3 of the Administrative Code is amended to read as follows:

The Board of Ethics, [created and established pursuant to subdivision 7 of §22.4.2 of the Nassau County Administrative Code] as governed by section 2218 of the Nassau County Charter, shall continue and shall have and exercise such additional powers and duties in regard to financial disclosure as are set forth below:

§ 5. Subdivision 7 of section 22-4.3 of the Nassau County Administrative Code is amended by adding a new paragraph (l) to read as follows:

(l) Where an Advisory Council on Disclosure has not been appointed pursuant to this subdivision, or where more than two vacancies exist on such Council, the Board of Ethics may designate a sub-committee of its members to exercise the duties and powers of this subdivision.

§ 6. This local law shall take effect immediately; provided that the two positions to be immediately eliminated on the Board of Ethics shall be those positions, expiring on 4/7/2008 and 4/7/2011, that are currently unoccupied by current appointees or holdovers; and provided further that the elimination of the Commissioner of Investigation as an ex officio member of the Board of Ethics shall take place upon the appointment of a new member by the County Executive or three months from the effective date of this local law, whichever is sooner; and provided further that such County Executive appointment shall be for a term expiring on 4/7/2008, and such position shall thereafter be filled for a term expiring on 4/7/2013 and every five years thereafter; and provided further that the prohibition on a majority of Board members being officers or employees of the County or any municipality shall not apply for three months following the effective date of this local law.