

1. ETHICS COUNSEL, FORMER NASSAU ETHICS CHAIR AND LECTURER STEVEN LEVENTHAL

-----Original Message-----

From: Steven Leventhal [mailto:sleventhal@LS-LLP.com]

Sent: Monday, June 14, 2010 4:18 PM

To: Subject: Ethics question

As you know, I am the former chair of the Nassau County Board of Ethics, current counsel to that Board, and counsel to several other municipal ethics boards. I am also a member of the executive committee of the municipal law section of the NYS Bar Association, co-chair of its committee on municipal ethics, and a member of the State Bar's newly appointed task force on government ethics.

I am a frequent author and lecturer on the subject of government ethics, and conduct ethics training for municipal officers and employees statewide.

I advised you last week, as I have advised other municipalities, that the laws requiring annual financial disclosure generally avoid redundancy. For example, a person who is employed in more than one state employment capacity is only required to file a single annual disclosure statement. The General Municipal Law does not require local officers and employees to file duplicative annual financial disclosure statements if they are already subject to the filing requirements of the Public Officers Law, or if they are subject to the filing requirements of more than one municipality.



I have not received a media inquiry in this matter.

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2. NEW YORK CITY CONFLICTS OF INTEREST BOARD

From: Wayne Hawley [mailto:hawley@coib.nyc.gov]

Sent: Monday, June 14, 2010 4:34 PM

To:

Subject: financial disclosure

It has been the New York City Conflicts of Interest Board's interpretation of and practice under state and local financial disclosure laws to accept the state financial disclosure report of any required City filer as compliance with local disclosure requirements. See e.g., Gen. Mun. Law §811(1)(b) (an individual required to file under this section will satisfy this obligation if the person files a disclosure report pursuant to Public Officers Law §73a); NYC Admin. Code §12-110(b)(1)(b) (filing under Public Officers Law §73a will satisfy the requirements of those individuals also required to file in New York City).



From: Mark Davies [mailto:davies@coib.nyc.gov]
Sent: Tuesday, July 06, 2010 2:11 PM
To: Aug, Dan
Cc: Wayne Hawley
Subject: Financial Disclosure

Mr. Aug,

You asked for my views as to whether the Suffolk County Executive must file a separate financial disclosure report under Suffolk County Law since, as a member of the New York State Pine Barrens Commission, he files, pursuant to State law (New York Public Officers Law Section 73-a), a financial disclosure report with the New York State Public Integrity Commission. The short (and crystal clear) answer is no; he need only file a copy of his State financial disclosure report with the County. Suffolk County has adopted a financial disclosure law and form pursuant to subdivision (1) of New York State General Municipal Law Section 811. That same subdivision of the law expressly provides:

“a person who is subject to the filing requirements of both subdivision two of section seventy-three-a of the public officers law and of this subdivision may satisfy the requirements of this subdivision by filing a copy of the statement filed pursuant to section seventy-three-a of the public officers law with the appropriate body, as defined in section eight hundred ten of this article, on or before the filing deadline provided in such section seventy-three-a, notwithstanding the filing deadline otherwise imposed by this subdivision.” (General Municipal Law Section 811(1)(b).)



Since State law supersedes County law, the County has no power to mandate that the County Executive (or, indeed, any other officer or employee of the County who files a financial disclosure report pursuant to Pub. Off. Law Section 73-a) file a separate County financial disclosure report with the County. State law MANDATES that the County accept a copy of the State financial disclosure report in lieu of the County form. The County has no discretion in this matter.

I would also add that this same rule applies in New York City, as it does in every municipality in the State to which financial disclosure requirements apply.

While the views expressed in this email are solely my own and not necessarily those of the New York City Conflicts of Interest Board or the City of New York, I should note that I served as the Executive Director of the Temporary New York State Commission on Local Government Ethics, the sole State agency ever charged with administering financial disclosure in municipalities in New York State; indeed, we worked at the time with Suffolk County to ensure that the County's financial disclosure law met the requirements of State law. See generally Mark Davies, *1987 Ethics in Government Act: Financial Disclosure Provisions for Municipal Officials and Proposals for Reform*, 11 PACE LAW REVIEW 243-279 (1991).

Please contact me if I can provide any additional information.

Mark Davies
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From: Ginsberg, Barry (CPI)
Sent: Tuesday, July 06, 2010 3:30 PM
To: Dan.aug@suffolkcounty.ny.gov
Subject: Financial Disclosure Requirments

Both General Municipal Law §§811((1)(b) and 812(1)(f) permit a local government official who is required by Public Officers Law §73-a to file an annual statement of financial disclosure with the Commission on Public Integrity to satisfy a financial disclosure requirement imposed by a local government by timely filing the State financial disclosure form with the Commission and submitting a copy to the appropriate local government entity.

This email sets forth my own views, based on my review of the law, and is not an opinion of the Commission. Since the Commission has no role with respect to enforcing financial disclosure requirements that local governments may establish, the Commission has not had occasion to consider the application of the above-referenced provisions to any particular individual or circumstances.

Barry Ginsberg
Executive Director and
General Counsel
Commission on Public Integrity
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Testimony of Mark Davies
Before the
Suffolk County Legislature
Sept. 22, 2010

My name is Mark Davies. I previously served as the Executive Director of the Temporary State Commission on Local Government Ethics, the only state agency ever authorized to administer the financial disclosure requirements of Article 18 of the General Municipal Law. I am the co-chair of the Government Ethics and Professional Responsibility Committee of the New York State Bar Association's Municipal Law Section and a member of the Section's Executive Committee, Chair of the Municipal Ethics Subcommittee of the New York State Bar Association President's Task Force on Ethics, co-chair of the Ethics Committee of the American Bar Association's Section of State and Local Government Law, and an Adviser to the American Law Institute's Project on Public Integrity. I also serve on the board of directors of Global Integrity, a Washington-based NGO, and as an Adjunct Professor of Law at Fordham Law School. I have lectured extensively on ethics, both nationally and internationally, and have authored numerous publications on the subject.

For the record, my views do not necessarily represent those of the New York City Conflicts of Interest Board, where I serve as Executive Director, except as expressly stated.

I have been asked to give my views on whether a Suffolk County officer or employee who files a financial disclosure report with the New York State Public Integrity Commission pursuant to New York Public Officers Law § 73-a may file a copy of that report with the Suffolk County Ethics Commission in lieu of filing the Suffolk County financial disclosure form. The answer is yes.

Suffolk County has adopted a financial disclosure law and form pursuant to subdivision (1) of New York State General Municipal Law § 811. That same subdivision - § 811, subdivision (1) - expressly provides:

a person who is subject to the filing requirements of both subdivision two of section seventy-three-a of the public officers law and of this subdivision may satisfy the requirements of this subdivision by filing a copy of the statement filed pursuant to section seventy-three-a of the public officers law with the appropriate body, as defined in section

eight hundred ten of this article, on or before the filing deadline provided in such section seventy-three-a, notwithstanding the filing deadline otherwise imposed by this subdivision. (Gen. Mun. Law § 811(1)(b).)

State law therefore *mandates* that the county accept the state form in lieu of the county form.

It has been suggested that this mandate is limited to filings by local political party officials, which is the subject to the opening sentence of the paragraph in which the mandate appears. This argument is wrong for two reasons. First, the mandate applies not to “a local political party official” but to “a person.” Second, the mandate refers not to filing pursuant to “this paragraph” – namely, paragraph (b) of subdivision (1) of section 811 – but rather to “this subdivision,” which includes all officials required to file a financial disclosure report.

Also, the Temporary State Commission took the position that municipalities subject to the state’s financial disclosure law, set forth in sections 810 through 813 of the General Municipal Law, had to comply with those provisions – for example, to meet certain minimum requirements in the municipality’s financial disclosure form and to require certain types of officials to file. The municipality had no authority to vary those provisions by local law. While the Commission did not address the specific issue of filing a state form in lieu of a local form, the New York City Conflicts of Interest Board, the ethics board for the City of New York, has taken the position that the Board has no alternative but to accept the state form in lieu of the City’s form. This is true even though the City’s law requires that officials disclose certain specified information, as reflected in the City’s form. (NYC Ad. Code § 12-110(b).) Indeed, one Deputy Mayor, with the Board’s blessing, files a paper copy of her state form in lieu of the New York City form.

This result is consistent with the purpose of annual financial disclosure, namely, to reveal potential conflicts of interest in order to prevent violations of the ethics code from occurring. The purpose of financial disclosure is not disclosure for disclosure’s sake. For example, in amending General Municipal Law § 811 in 2008, the state legislature recognized that disclosure requirements must be reasonable. (2008 N.Y. Laws ch. 41, New York Senate Introducer’s Memorandum in Support.) The requirement in section 811 that a municipality accept a state financial disclosure form filed pursuant to state law in lieu of the local form reflects this intent.

Indeed, a comparison of the state form and the Suffolk County form reveals that, on the whole, the state form is *more* extensive than the county form. For example, the county form fails to include:

- Uncompensated positions with entities that have no current business or licenses with the county, even if they had immediately past county business or have upcoming county business
- Offices in political parties and political organizations
- With respect to the filer's business: the nature of the business, the subject areas of matters undertaken, and the address
- Any information on the assets and liabilities of the filer's unemancipated children
- The nature of agreements for future employment
- Assignments and transfers of income and interests to others for less than fair market value
- Securities held by a corporation for investment when the filer or his or her spouse owns or controls 50% or more of the corporation
- Above all, gifts and reimbursements, which are among the most important items to disclose on a financial disclosure form.

But perhaps most significantly, the county's financial disclosure form violates state law, as interpreted by the Commission, again the only state agency ever authorized to administer the financial disclosure provisions of state law. In particular, the county's form fails to include, as required by state law, at least six items:

- Uncompensated positions with entities that have no current business or licenses with the county, even if they had immediately past county business or have upcoming county business
- Promises of future employment, even if they do not rise to the level of a contract
- Third-party reimbursements
- Any positions within the past five years as an officer in any political party, political committee, or political organization
- Any information on the assets and liabilities of the filer's dependent children
- Most importantly, gifts received by the filer, spouse, or dependent child in excess of \$250, one of the most significant sources of conflicts of

interest and one of the most important questions on a financial disclosure form.

Since the state form contains almost all of this information, you may wish to consider adopting the state form, at least on an interim basis, until the county form can be brought into compliance with state law.

Thank you.

[Legal: Suffolk County: Davies Testimony Sept 22 2010]