C

Melissa Velez-Morales

From: Masser, Michelle
Sent: Wednesday, March 16, 2016 3:50 PM
To: Harris, Laura
Cc: Gouveia, Susan; Melissa Velez-Morales
Subject: FW: 2016 Annual Financial Disclosure Statement and Local Finance Notice (2016-07)

CORRESPONDENCE

Michelle Masser
Township Clerk
Mount Olive Township
PO Box 450
204 Flanders Drakestown Road
Budd Lake, NJ 07828
clerk@mtolivetwp.org
973-691-0900 X7291

-----Original Message-----
From: egg@dca.state.nj.us [mailto:egg@dca.state.nj.us]
Sent: Wednesday, March 16, 2016 3:18 PM
To: Masser, Michelle <clerkmichelle@mtolivetwp.org>
Subject: 2016 Annual Financial Disclosure Statement and Local Finance Notice (2016-07)

Dear Municipal Clerk:

Please be advised that Local Finance Notice 2016-07 has been sent to your Local Government Entity Representative. The LFN contains important information concerning the annual financial disclosure statement filing process. You may view the notice by clicking on the link: http://nj.gov/dca/divisions/dlgs/lfns/16/2016-07.pdf.

Rosters may be updated beginning on Wednesday, March 16, 2016. The deadline to complete roster updates is April 1, 2016.

A separate Local Finance Notice (LFN 2016-08) will be released in the upcoming weeks for distribution to Local Government Officers. The deadline for LGO filing is April 30, 2016.

If you have questions that are not addressed in LFN 2016-07 or on any of the Help pages, please call the Local Finance Board staff at 609-292-4537.

THIS GovConnect NOTICE HAS BEEN SENT TO THE FOLLOWING OFFICIALS: Municipal Clerk / County Freeholder Board Clerk / Authority Officials

new jersey department of community affairs
people.places.progress
division of local government services | dlgs

LFN 2016-07

March 16, 2016

Local Finance Notice

Chris Christie, *Governor* | Kim Guadagno, *Lt. Governor* | Charles A. Richman, *Commissioner* | Timothy J. Cunningham, *Director*

Contact Information

Director's Office
V. 609.292.6613
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Local Government Research
V. 609.292.6110
F. 609.292.9073

Financial Regulation and Assistance
V. 609.292.4806
F. 609.984.7388

Local Finance Board
V. 609.292.0479
F. 609.633.6243

Local Management Services
V. 609.292.7842
F. 609.633.6243

Authority Regulation
V. 609.984.0132
F. 609.984.7388

Mail and Delivery
101 South Broad St.
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E-mail: dlgs@dca.nj.gov

Distribution

Municipal and County Clerks
Local Ethics Boards
County Colleges
Joint Meetings
Regional Authorities
Joint Insurance Funds

Local Government Ethics Law
2016 Financial Disclosure Statements
For the 2016 Filing Year

Local Government Entity (LGE) Roster Updates Due: April 1, 2016

Local Government Officer (LGO) Filing Period: April 4 to April 30, 2016

Introduction

The Local Government Ethics Law (LGEL) requires local government officers to annually file a financial disclosure statement on or before April 30th of each year. This Local Finance Notice outlines the filing procedure that is designed to facilitate efficiency and enhance transparency by using available technology to accept and report financial disclosure statements online. This notice is intended for municipal clerks, county clerks, and other local government entity representatives who have administrative responsibilities concerning financial disclosure statements. Local Finance Notice 2016-08 contains information for local government officers and will be issued in the coming weeks.

Contents of this Local Finance Notice

I. Background
II. Statutory Requirements/Concepts
III. Role of Municipal Clerks, County Clerks, and other Local Government Entity Representatives
IV. Determining Local Government Officers Required to File
V. Distribution of Local Finance Notice 2016-08
VI. Help System

The following abbreviations are used throughout this notice:

LGO = local government officer
FDS = financial disclosure statement(s)
LGE = local government entity
LFB = Local Finance Board
LFN = Local Finance Notice
DLGS = Division of Local Government Services

"Local government entity representative" is intended herein to mean the municipal clerk, county clerk, or other person who has administrative responsibilities on behalf of a local government entity regarding financial disclosure statements.

I. Background

For the 2016 FDS, DLGS is using the online filing system that was established in 2014. The 2015 rosters will be carried over and LGE Representatives will be able to make necessary updates for 2016 without creating a new roster. Additionally, LGOs are able to save their FDS forms from year to year.

Prior to 2012, the FDS distribution and filing process relied upon a traditional paper based system. The decision to move to an electronic filing system was designed to eliminate the practice of annually printing 70,000 paper copies of the FDS form and mailing them to each LGE.

As the online system is going to be used again this year, paper copies of the financial disclosure statement **will not** be accepted by the Local Finance Board. All completed financial disclosure statements must be submitted using the LFB's online filing system found at **http://www.fds.nj.gov**.

II. Statutory Requirements/Concepts

N.J.S.A. **40A:9-22.6.a** provides that "[l]ocal government officers shall annually file a financial disclosure statement." N.J.S.A. **40A:9-22.6.b** provides that statements shall be filed on or before April 30th each year, except that each local government officer shall file a financial disclosure statement within 30 days of taking office.

The concept that LGOs have personal responsibility for annually filing their FDS forms is an important one. Municipal clerks, county clerks, and other local government entity representatives who have administrative responsibilities concerning the FDS filing process are not required to complete FDS forms on behalf of LGOs, nor are they required to ensure that LGOs satisfy their statutory obligation to annually file a FDS. The failure of any LGO to comply with the annual filing requirement subjects the LGO personally to the penalties and disciplinary action provisions set forth in N.J.S.A. 40A:9-22.10 and 40A:9-22.11.

This means that each LGO has the personal duty, by virtue of the LGO's public office, appointment, or employment, to carefully read LFN 2016-08 (to be issued in the coming weeks), understand the online filing procedure, and take necessary steps to timely file the LGO's FDS.

N.J.S.A. **40A:9-22.6.b** provides that the "Local Finance Board shall prescribe a financial disclosure statement form for filing purposes." N.J.S.A. **40A:9-22.6.d** further provides that "**the Division of Local Government Services in the Department of Community Affairs may establish an electronic filing system for financial disclosure statements required to be filed pursuant to this section.**"

The online FDS form is substantively similar to the paper FDS form utilized for many years. The LFB has not adopted the more expansive ethics disclosure form utilized by the State Ethics Commission.

N.J.S.A. **40A:9-22.6.b** further provides that "the original statement shall be filed with" the municipal clerk, county clerk, or other local government entity representative as appropriate to the circumstances. This requirement is satisfied when the LGO submits the FDS using the online filing system.

N.J.S.A. **40A:9-22.6.b** also provides that "a copy of the statement shall be filed with the [Local Finance] board." This requirement is satisfied when the LGO submits the FDS using the online filing system. The electronically submitted FDS forms will be accepted as the Board's copy.

III. Role of Municipal Clerks, County Clerks, and Other Local Government Entity Representatives Regarding Financial Disclosure Statements

The following steps pertain only to municipal clerks, county clerks, and other local government entity representatives who have administrative responsibilities concerning financial disclosure statements:

STEP 1: Carefully review this Local Finance Notice.

STEP 2: Visit the FDS website (www.fds.nj.gov) and log in using the ID and password you used last year. Your login ID is your e-mail address. Please keep in mind that a different e-mail address must be used for you to personally file your FDS. If you are a new LGE Representative and do not have a login ID and password or if you need to change your e-mail address as the LGE Representative, please call the Local Finance Board at 609-292-4537.

STEP 3: Using the "Manage LGO Roster" button, update the roster to add new 2016 LGOs; update existing LGO's positions and information; or "In-Activate" those LGOs that are no longer serving the LGE. All LGO rosters must be completed no later than **April 1, 2016**, so that LGOs have sufficient time to complete and submit their FDS forms by Saturday, April 30, 2016.

Updating Existing LGO'S:

All changes to an existing LGO can be done by clicking on the 'EDIT' button under the 'Actions' column to the far right in the roster listing.

-If an LGO is no longer serving in **any** of the positions listed in the FDS, then you must deactivate that LGO from the system by checking the box labeled "In-Active."

-To delete one or more positions (but not all positions) for an LGO no longer serving in a certain position(s), click on the 'Delete' button for each position to be deleted.

-To ***add a new position for an existing LGO***, complete the information in the "Add LGO position" box.

-After making any changes, be sure to click the 'SAVE' button on the page.

Adding New LGO's:

-To add a new LGO, click on the "Add LGO" button at the bottom of the Roster listing screen and complete the Local Government Official information boxes.

-After making any changes, be sure to click the 'SAVE' button on the page.

STEP 4: As you update the LGO roster, a PIN # will be generated for each **new** LGO. Distribute the PIN # along with a copy of Local Finance Notice 2016-08 (when issued) to each new LGO, keeping in mind that the login information is confidential and should be given only to the associated LGO. Inform any new LGO that this PIN # must be used to login, and that their FDS must be filed between April 4th and April 30th.

STEP 5: Inform LGOs who filed in 2015 that they must use the same Login ID (e-mail address) and password used to complete their 2015 FDS. Distribute to each LGO a copy of Local Finance Notice 2016-08 once it is available. Inform the LGOs that they must file their FDS between April 4th and April 30th. The method by which you choose to distribute this information is a local decision.

- If an LGO forgets their login ID/e-mail, you may provide it to them from their e-mail shown on your roster.
- If an LGO needs to change their e-mail address and/or password, you may do so for them under their profile. Click on "manage your roster," then select "edit" under actions, then select "Edit Profile" for the LGO whose e-mail address or password you need to edit or change.

STEP 6: View your roster and make sure the roster is up-to-date. To view the roster in its entirety, click on "Reports." You can export your roster by selecting the "Export" button (it looks like a floppy disk.) You can then view your roster as a pdf or Excel document, which may make it easier to view and/or

sort. You can also view your roster by going to www.fds.nj.gov, then clicking the "search" button, and then selecting the "search local government officer roster."

STEP 7: If you receive technical questions from LGOs concerning how to validate their PIN #s or how to complete their FDS forms you can refer them to the help resources available at www.fds.nj.gov.

It is the LGE representative's responsibility to ensure that the LGO roster is fully and accurately updated on or before April 1, 2016. Those LGE representatives who do not update the rosters may be subjecting some LGOs to possible violations of the filing requirement in the Local Government Ethics Law. For example, all LGOs who remain active on rosters will be required to submit a 2016 FDS. Those LGOs who are improperly retained on the roster, and as a result, fail to file an FDS, could be found in violation. Notices of violation for non-filing will be generated after the filing deadline from the roster created by the LGE representative. Similarly, new LGOs who are required to be listed on the roster, but whose names have not been added, will not receive a PIN # and, therefore, will not be able to file an FDS.

IV. Determining Local Government Officers Required to File

While the Local Government Ethics Law applies to all employees and officers of local governments, only "local government officers" are required to file an FDS. Individuals who are serving the local government on April 20, 2016 are considered local government officers or employees for purposes of the LGEL. Individuals who are no longer in officer or no longer employed by the local government on the filing deadline are NOT considered local government officers or employees under the LGEL. The LFB requests that each municipal clerk, county clerk, and other local government entity representative carefully review their LGO roster in consideration of the guidance provided in this section and in consultation with local counsel.

If, after review, it is determined that some positions within the local government are not deemed to be local government officers and, therefore, not required to file an FDS, please update the LGO roster and notify those individuals of your determination. If the LFB receives a signed written complaint alleging that a person is an LGO who did not file an FDS and that person is not included on the roster, the LFB will require the local government to explain how it determined that person not to be a LGO.

N.J.S.A. 40A:9-22.3.e defines a local government agency as "any agency, board, governing body, including the chief executive officer, bureau, division, office, commission or other instrumentality within a county or municipality, and any independent local authority, including any entity created by more than one county or municipality, which performs functions other than of a purely advisory nature, but shall not include a school board."

N.J.S.A. 40A: 9-22.3.g defines a local government officer as "any person, whether compensated or not, whether part-time or full- time: (1) elected to any office of a local government agency; (2) serving on a local government agency, which has the authority to enact ordinances, approve development applications or grant zoning variances; (3) who is a member of an independent municipal, county or regional authority; or (4) who is a managerial executive employee of a local government agency, as defined in rules and regulations adopted by the Director of the Division of Local Government Services in the Department of Community Affairs pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C.52:14B-1 et seq.), but shall not mean any employee of a school district or member of a school board.

Section 3.g(4) of the LGEL concerning the definition of managerial executive was amended in August 2015. The DLGS is in the process of adopting new Rules and Regulations defining managerial executive employees for FDS filing purposes. These new rules will not be adopted in time for the 2016 filing year. Entities are directed to continue to determine managerial executive employees based on the prior guidance found in the Attorney General opinions.

The Office of the Attorney General has issued a series of opinions giving advice as to the type of positions that are considered "local government officers." These opinions may be viewed at the Division of Local Government Services' website: http://www.nj.gov/dca/divisions/dlgs/programs/ethics.html. Click on Ethics Law and Complaints/Ethics Related Opinions to view these opinions.

Neither the LFB nor the Attorney General's Office can examine every local position or public body in the State that is created by ordinance and determine whether or not it is subject to the filing requirement. These determinations, to a large extent, are fact sensitive and must be determined on a case-by-case basis by each local government. It is recommended that municipal clerks, county clerks, and other local government entity representatives consult with your local counsel to make individual determinations.

To assist with such reviews, the following information, extracted from the Attorney General Opinions, provides specific guidance on various positions.

Positions Specifically Required to File an FDS

The following positions are specifically **required** to file the FDS (listed in opinion number order):

- AO 91-0090: County Prosecutor
- AO 91-0092: Municipal Attorney
- AO 91-0093:
  - Elected Officials (and any person selected to fill a vacancy in an elected position.)
  - Board of Health Members
  - Planning Board Members
  - Board of Adjustment Members
  - Zoning Board of Adjustment Members
  - Independent Authority Members
  - Fire District Commissioners
  - Special Tax District Commissioners
- AO 91-0132: Board of Recreation Commissioners
- AO 91-0133: Planning/Zoning Board Attorney
- AO 91-0134: Independent Local Government Agency Attorney
- AO 92-0061: Local Ethics Board Members
- AO 92-0069: Rent Leveling Board Members
- AO 92-0072: Joint Insurance Fund Commissioners
- AO 92-0109: County and Municipal Emergency Management Coordinators
- AO 00-0041: County Agricultural Development Board Members

Positions Specifically NOT Required to File an FDS

Attorney General Opinions have been issued determining that the following are specifically **not required** to file the FDS (listed in opinion number order):

- AO 91-0096: Court Personnel – Including Judges and Court Administrators
- AO 91-0141: County Board of Taxation Commissioners
- AO 92-0070: Local Assistance Board Members
- AO 92-0071: Municipal Environmental Commission Members
- AO 92-0109: Emergency Management Council Members
- AO 95-0168:
  - County/Local Advisory Committee on Alcoholism and Drug Abuse Members
  - County Alliance Steering Subcommittee Members

- Municipal Alliance Committee Members
- AO 97-0135: Registered Municipal Accountants Serving as Local Government Auditors

In addition, while Board of Elections Members and County Superintendents of Elections are not covered under the Local Government Ethics Law, they are covered by procedures adopted by the State Ethics Commission.

Managerial Executive and/or Confidential Employees

The determination regarding **managerial executive employees** is fact sensitive. Attorney General Opinion #91-0093 provides a six page analysis of how such determinations have been made by the Public Employment Relations Commission (PERC) in interpreting the NJ Employer-Employee Relations Act, which was tied to the Local Government Ethics Law at N.J.S.A. 40A:9-22.3g(4) prior to the recent amendment. Please review this opinion to make determinations locally for these categories. If a local government employee's title is covered by a bargaining unit, most likely, that person would not be required to file an FDS.

As general guidance, please also note that the opinion points out the **following have been deemed by PERC as managerial executive and/or confidential employees** in at least one local government:

Municipal Clerk
Police Chief
*Police Captain
Assistant County Treasurer
Treasurer
*Deputy Fire Chief
Board of Trustees of County College
Secretary (Confidential)
Deputy Municipal Clerk
*Deputy Police Chief
Public Works Superintendent
Health Officer
Fire Chief
Library Board Trustees
Administrative Assistants (Confidential)
Assistant County Attorney

Additionally, the following have been deemed by PERC as **not managerial executive and/or confidential employees** in at least one local government:

Construction Official
Fire Inspector
*Deputy Fire Chief
Police Sergeant
Lifeguard Captain
Tax Assessor
Deputy Warden
Assistant Tax Collector
Fire Marshal
*Deputy Police Chief
*Police Captain
Assistant Engineer
Zoning Officer
Library Director
Tax Collector

* listed in both categories

As can be seen from these Attorney General Opinions, PERC has taken a different position on the same title in different local governments. Local governments are asked to make a thorough analysis of the titles or positions they have deemed to be local government officers. Please review your LGO Rosters against the various Attorney General Opinions to ensure that only those positions required to file are included in your roster.

Common Misunderstandings

For a variety of reasons found in the Local Government Ethics Law and in the Attorney General Opinions, there are positions that are not required to file the FDS. Please note that the LFB will not pursue "failure to file" complaints charging persons holding titles/positions that are not required to be filed even if the local government includes such a title/position on the roster. They include:

- Advisory Board Members
- Court Personnel/Municipal Court Judges
- Registered Municipal Accountants
- Bond Counsel
- Labor Counsel

V. Distribution of Local Finance Notice 2016-08

Municipal clerks, county clerks, and other local government entity representatives are responsible for transmitting LFN 2016-8 (when it is released) to LGOs. For purposes of N.J.S.A. 40:9-22.1 et seq., officers and employees serving independent local authorities are deemed to be serving the local government. In Attorney General Opinion #91-0093, the Office of the Attorney General determined that the term "independent authorities" encompasses most autonomous local authorities and special tax districts. This includes fire districts. Thus, municipal clerks and county clerks also make distribution to independent local authorities (including fire districts). Additionally, these LGOs should be included on the municipal or county LGO roster.

However, for a municipality or county that has established an ethics board, the local ethics boards are required to make LFN 2016-08 (when it is released) available to LGOs within their jurisdiction. Please forward this communication to representatives of your local ethics board for necessary action. The LFB does not have direct contact information for local ethics boards.

Other local government entity representatives: county colleges (e.g., Office of the President), regional authorities, joint insurance funds, health insurance funds, and joint meetings should designate an individual internally to transmit LFN 2016-08 (when it is released) to their respective LGOs in accordance with N.J.S.A. 40A: 9-22.6 and to be responsible for submitting the entity's LGO roster through the online filing system.

VI. Help System

The following help resources have been developed for both LGEs and LGOs:

1. The webinar trainings recorded in 2014 have been uploaded to a YouTube website. The full URL for the YouTube website is: http://www.youtube.com/playlist?list=PL1ZrHg25YW4sKS9IjkWMyED-vRwvZdZp5.
2. Separate reference guides have been created for local government entity representatives and LGOs. These documents are available at www.fds.nj.gov.
3. A video training was specially created for LGOs and is available at www.fds.nj.gov.
4. A Frequently Asked Questions document that answers commonly asked questions is available at www.fds.nj.gov.

Questions should be directed to the Local Finance Board staff at 609-292-4537.

Approved: Timothy J. Cunningham, Director