



**TOWNSHIP OF DOWNE
CUMBERLAND COUNTY, NEW JERSEY**

	YES	NO	ABSTAIN	ABSENT
Bart, E.	X			
Byrne, S.	X			
Burt, S.				X
Rothman, M.	X			
Campbell, R.	X			

Resolution Number: R-104-2020 Dated: October 12, 2020 Offered By: BART Seconded By: ROTHMAN
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**A RESOLUTION ADOPTING A COMPREHENSIVE CONFLICT
OF INTEREST POLICY FOR THE TOWNSHIP OF DOWNE**

WHEREAS, the Township of Downe previously adopted a Conflict of Interest policy; and

WHEREAS, the Township of Downe wishes to update and expand the Conflict of Interest policy at this time; and

WHEREAS, the Township Committee believes it in the best interest of the Township to adopt this updated policy; and

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Downe that the Conflict of Interest Policy shall be updated as follows:

TOWNSHIP OF DOWNE CONFLICT OF INTEREST POLICY

PURPOSE

The purpose of this conflict of interest policy is to present a framework for addressing conflict of interest issues arising with respect to the Downe Township involving an elected official of Downe Township (an "Elected Official") or an employee of Downe Township (an "Employee").

As in any municipal government, conflicts of interest may arise from time to time for Elected Officials and Employees of Downe Township. This policy establishes a process for identifying, disclosing, and addressing such conflicts so that, if a conflict of interest exists, decision-making can be performed by disinterested individuals.

This policy is intended to be complementary to the New Jersey Local Government Ethics Law, set forth at N.J.S.A. 40A:9-22.1 et seq. It focuses on the actions of Elected Officials and Employees regarding potential decisions, agreements or relationships involving third parties and does not address other ethical

issues that may overlap with conflict of interest issues, such as issues relating to the hiring or management of relatives, undertaking non-conflicted employment outside of the government, or the receipt of gifts, all of which are addressed in the Local Government Ethics Law. In the event of a conflict between this policy and the Local Government Ethics Law or any other relevant law ("Applicable Law"), the provisions of Applicable Law shall prevail.

GENERAL POLICY

Elected Officials and Employees are expected to make or participate in decisions and take actions in the course of their service or employment with Downe Township based on the best interests of Downe Township, and not based on financial or other personal gain unrelated to the best interests of Downe Township. The procedure for dealing with conflicts of interest among such individuals is comprised of three steps:

1. Identification - identify conflicts of interest.
2. Disclosure - where a situation gives rise to a conflict of interest, disclose such conflict as described below.
3. Decision-making - once a conflict of interest has been identified and disclosed, apply procedures to provide for non-conflicted decision-making.

STEP ONE: IDENTIFICATION

The New Jersey Local Government Ethics Law, NJSA 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.

For purposes of this policy, "immediate family" members include: an Elected Official's or an Employee's spouse, children, stepchildren and any other person sharing the same household with such Elected Official or Employee (other than a tenant or employee of such Elected Official or Employee).

As per the New Jersey Local Government Ethics Law, interests that could create a conflict of interest include not only financial interests. For example, if an individual has a direct affiliation with a not-for-profit organization or local citizens' group, such affiliation could also create a conflict of interest.

New Jersey courts have indicated that the determination as to whether a conflict of interest exists is highly fact-specific and dependent on the circumstances. Furthermore, a conflicting interest does not require that the interest might actually influence the action of the individual, but only that

the interest creates a potential for conflict. *Meyer v. MW Red Bank LLC*, 401 N.J. Super. 482 (App. Div. 2008).

However, not all interests create a conflict of interest. The Supreme Court of New Jersey has noted,

Local governments would be seriously handicapped if every possible interest, no matter how remote and speculative, would serve as a disqualification of an official. If this were so, it would discourage capable men and women from holding public office. Of course, courts should scrutinize the circumstances with great care and should condemn anything which indicates the likelihood of corruption or favoritism. But in doing so they must also be mindful that to abrogate a municipal action at the suggestion that some remote and nebulous interest is present, would be to unjustifiably deprive a municipality in many important instances of the services of its duly elected or appointed officials. The determinations of municipal officials should not be approached with a general feeling of suspicion, for, as Justice Holmes has said, "Universal distrust creates universal incompetence." *Wyzykowski v. Rizas and Planning Board of the Township of Neptune*, 132 N.J. 509 (1990).

Thus, when considering whether a conflict of interest exists, one commentator has noted, "An official may have an interest in the subject matter and still vote on the issue if that interest is not sufficient to exert undue influence on his or her decision". See "Conflicts of Interest for Municipal Officials in New Jersey." by Deborah M. Kole, Staff Attorney, New Jersey State League of Municipalities at www.njslom.org/magart_1207_pg18.html (hereinafter "Kole Article"), citing *Hughes v. Monmouth University*, Docket No. A-2227-06T2 (App. Div. 2007).

In one recent case, a court opined that the standard to be applied when determining whether there is a conflict of interest for an elected official is whether a situation would lead a reasonably informed citizen to "expect that [the elected official's] objectivity or independence of judgment" with respect to the decision before the governing body "would be impaired." See *Mountain Hill LLC v. Township Committee of the Township of Middletown*, 403 NJ. Super. 146 (App. Div. 2008).

A broad definition of "conflict of interest" is set forth above. It is not possible to list all types of conflict of interest. Ultimately, it is the responsibility of each Elected Official and Employee to identify any situation of which he or she is aware that might be considered a conflict of interest, either with respect to (i) such Elected Official or Employee or (ii) any other Elected Official or Employee.

In the event an Elected Official or Employee is not sure if an actual or potential situation presents a conflict of interest, he or she should seek guidance from either (i) the Downe Township COI Attorney or (ii) the New

Jersey Local Finance Board in the Division of Local Government Services in the Department of Community Affairs (the "Local Finance Board"). The "Downe Township COI Attorney" shall be an individual selected by the Downe Township Governing Body and may be either the Downe Township municipal attorney or another attorney. In selecting the Downe Township COI Attorney, the Downe Township Governing Body shall choose an individual with sufficient independence, judgment, and experience so as to be able to provide objective, unbiased, well-reasoned opinions consistent with this policy. In the event the Elected Official or Employee seeks guidance from the Downe Township COI Attorney, the Downe Township COI Attorney will provide such guidance consistent with Applicable Law and this policy, including the process set forth below under "Seeking Advice of Counsel or the Local Finance Board". In the event the Elected Official or Employee seeks guidance from the Local Finance Board, the Local Finance Board will follow its own policies and procedures. If an Employee is seeking guidance pursuant to this paragraph, he or she should do so through the Downe Township Administrator (the "Administrator"). When seeking guidance under this paragraph, the Elected Official or Employee shall describe, in writing, all of the relevant facts and circumstances concerning the actual or potential conflict of interest to the Downe Township COI Attorney or Local Finance Board, as applicable. Information provided pursuant to the preceding sentence shall be confidential.

STEP TWO: DISCLOSURE

Elected Officials. When an Elected Official identifies a conflict of interest pursuant to Step One above, he or she should promptly notify the Mayor, the Council President, and the Downe Township COI Attorney of such conflict of interest. The Mayor will, in turn, promptly notify the Downe Township Governing Body of such conflict of interest or, if the Elected Official with the conflict of interest is the Mayor, the Council President will promptly notify the Downe Township Governing Body of such conflict of interest. It is recognized that sometimes an Elected Official may not realize that she or he has a conflict of interest on a given matter until such matter is actually before the Downe Township Governing Body. In all cases, an Elected Official shall provide notice of such conflict of interest as soon as she or he becomes aware of such conflict. Following disclosure of an Elected Official conflict of interest, decision-making will then occur as set forth below under "Step Three: Decision- Making".

Employees. When an Employee identifies a conflict of interest, he or she should follow the procedure set forth below:

- If the Employee is an individual other than the Administrator, the Employee should promptly notify the Administrator in writing of such conflict of interest. The Administrator, in turn, will promptly notify the Downe Township Governing Body Personnel Committee (the "Personnel Committee"), the Downe Township COI Attorney and, if

applicable, the department head to whom such Employee ultimately reports, of such conflict of interest.

- If the Employee is the Administrator, he or she should promptly notify the Personnel Committee and the Downe Township COI Attorney of such conflict of interest.

Following disclosure of an Employee conflict of interest, decision-making will then occur as set forth below under "Step Three: Decision-Making".

General. In all cases, the disclosure provided by the relevant Elected Official or Employee as described in this Step Two should indicate that a conflict of interest exists and indicate the entity or entities with respect to which the conflict of interest exists. Furthermore, in situations where a conflict of interest exists with respect to a given entity, conflicted Elected Officials and Employees should not recommend or introduce such other entity to other Elected Officials or Employees within the Downe Township organization, or participate in discussions with other Downe Township Elected Officials or Employees concerning such entity, without a clear disclosure to such other Elected Officials or Employees that a conflict of interest exists. In the event an Elected Official or Employee inadvertently fails to make a disclosure as required by this Step Two, but such Elected Official or Employee properly recuses herself or himself from all decision-making consistent with this policy and Applicable Law, such a technical violation of this Step Two shall not be deemed to be a general violation of this policy.

STEP THREE: DECISION-MAKING

Following appropriate disclosure as described above, decision-making with respect to matters involving a conflict of interest shall be handled as set forth below.

Decisions Requiring Elected Official Action

- If the proposed decision is of a nature that, in the absence of a conflict of interest, would require action by the Downe Township Governing Body, or one or more Elected Officials (including by a committee of Elected Officials, if applicable), the decision must be reviewed and approved by the Downe Township Governing Body or the Elected Officials (or by the applicable committee of Elected Officials, if applicable), following full disclosure about the facts and circumstances of the conflict of interest.

In each of the foregoing situations, the following rules shall apply:

- Any Elected Official conflicted by the decision shall abstain from voting on the matter, shall leave the dais, and shall not participate in the discussion on such matter.

- Approval of the decision must be obtained from a majority of disinterested Elected Officials on the Downe Township Governing Body or the applicable committee.
- The Mayor, the Council President or the chair of the committee, as appropriate, may require that all conflicted Elected Officials either (i) leave the room for that portion of the Downe Township Governing Body meeting or committee meeting during which any discussion on the matter, as well as any vote on the matter, occurs. In the event the Mayor, the Council President or the chair of the committee is conflicted, any Elected Official present may require that the conflicted Elected Official leave the room for that portion of the Downe Township Governing Body meeting or committee meeting during which any discussion on the matter, as well as any vote on the matter, occurs. However, if that portion of the meeting is open to the public, the conflicted Elected Official may sit with the members of the public and observe the discussion which occurs.

Decisions by Employees

- If the decision at issue is one to be made by an Employee (and not the Elected Officials) and the individual with the conflict of interest is the Administrator, then the final decision on such matter will be made by the Downe Township Governing Body, or such committee as the Downe Township Governing Body shall designate, following full disclosure to the Downe Township Governing Body (or applicable committee) of the facts and circumstances of the conflict.
- If the decision at issue is one to be made by an Employee other than the Administrator (and not the Elected Officials), then the final decision will be made by the Administrator, following consultation with the Downe Township COI Attorney or the Local Finance Board.

Day-to-Day Interactions and Decision-Making in the Ordinary Course of Business

- Certain relationships that create a conflict of interest for a given Elected Official or Employee may involve day-to-day interactions and decision-making for Employees. If the day-to-day decision-making at issue is in the ordinary course of business, then such decision-making may be made by a non-conflicted Employee of Downe Township, consistent with any decisions or actions that have been approved in accordance with this policy and consistent with standard decision-making procedures in Sussex. In the event such nonconflicted Employee needs guidance from a supervisor who is conflicted, the non-conflicted Employee should consult with the Sussex COI Attorney to determine an appropriate avenue for obtaining nonconflicted guidance and decision-making.

General

In all of the foregoing situations where a matter is brought to the Personnel Committee, if a member of the Personnel Committee is conflicted under this policy, and after disqualifying such member from participating in any action with respect to the conflicted transaction there are fewer than two disinterested members of the Personnel Committee, the Mayor shall either appoint an additional disinterested Elected Official to act in such conflicted member's place or shall refer the matter to the full Downe Township Governing Body for decision-making in accordance with this policy. In taking any action delegated to it pursuant to this policy, the Personnel Committee may seek the advice of other Elected Officials, Employees, Downe Township Governing Body committees or outside advisors, so long as the final act is taken by the members of the Personnel Committee.

In the event that the Downe Township Governing Body, the Personnel Committee or, consistent with this policy, the non-conflicted decision-maker is made aware of a conflict of interest after a decision has been made by a conflicted decision-maker, the Downe Township Governing Body, the Personnel Committee or the non-conflicted decision-maker, as applicable under this policy, will review the decision and, after consultation with the Downe Township COI Attorney or the Local Finance Board, determine the appropriate course of action.

SPECIAL SITUATIONS

Set forth below is specific guidance for some potential areas of conflict of interest that require special attention.

Outside Employment, Business, Consulting, Advisory or Board Relationships

Elected Officials and Employees should inform the Personnel Committee about any employment, business, consulting, advisory or board (such as a board of directors) relationship that such Elected Official or Employee (or member of such Elected Official's or Employee's immediate family) has with an entity (including a not-for-profit entity or a citizens group) that presents a potential conflict of interest situation. In furtherance of this policy, Downe Township will periodically, but no less frequently than once per year, conduct an inquiry of Elected Officials and Employees to determine the status of their (and their immediate family members') employment, business, consulting, advisory or board relationships. It is understood that certain of the foregoing information may be reported by Elected Officials on their state financial disclosure statements; to the extent responsive to the foregoing requirement, and so as to minimize the reporting burden on Elected Officials, such individuals may cross-reference their state financial disclosure statements when providing the foregoing information.

Investments in Entities with whom Downe Township Has a Business Arrangement

Elected Officials and Employees may occasionally find themselves in a position to invest in entities with whom Downe Township has a business arrangement. Elected Officials and Employees presented with such opportunities should understand that a conflict of interest may occur in these circumstances. The following guidelines are intended to cover such circumstances:

- Disclosure. Elected Officials, Employees and their immediate families may not knowingly invest in entities with whom Downe Township has a business arrangement without disclosure as set forth above under "Step Two: Disclosure". In a similar vein, if Downe Township enters into a business arrangement with an entity and an Elected Official or Employee is aware that he or she has a pre-existing investment in such entity, the Elected Official or Employee should promptly make such disclosure as set forth above under "Step Two: Disclosure".
- Mutual Funds. Investments in diversified, publicly traded mutual funds are not subject to this conflict of interest policy.
- Public Companies. Investments representing not more than one percent (1%) of the total outstanding shares of a publicly held company are not subject to this conflict of interest policy.

Seeking Advice of Counsel or the Local Finance Board

Elected Officials and Employees should note that "if a municipal official seeks advice on a conflicts issue from the municipal attorney and certain conditions are met, such reliance can be a defense for the official against a claim of conflict." As per Kole Article, citing *In re Zisa*, 385 N.J. Super. 188 (App. Div. 2006). These conditions are:

- The advice must be received prior to an action being taken;
- The individual who offers the advice must possess authority or responsibility with regard to ethical issues;
- The individual seeking advice must make full disclosure of all pertinent facts and circumstances; and
- The individual must comply with the advice, including all the restrictions contained in it.

Accordingly, to the extent any Elected Official or Employee seeks advice from the Downe Township COI Attorney pursuant to this policy:

- The Downe Township COI Attorney shall issue a timely written opinion setting forth, at a minimum:
 - o the pertinent facts and circumstances, as the Downe Township COI Attorney understands them;

- o the Downe Township COI Attorney's determination as to whether there is a conflict of interest for such Elected Official or Employee under this policy and Applicable Law and the rationale (including a recitation of relevant rules and facts) in support of such determination; and
 - o if a conflict of interest does exist, any restrictions on such Elected Official or Employee as a result of such conflict of interest.
- If the Downe Township COI Attorney determines that there is a conflict of interest, the Elected Official or Employee must comply with the foregoing restrictions.

To the extent any Elected Official or Employee seeks advice from the Local Finance Board pursuant to this policy, such Elected Official or Employee shall be bound by the determination of the Local Finance Board.

Presiding Over Proceedings

As one commentator has pointed out, "In one unreported Law Division case, the court held that the adoption of a zoning ordinance was invalid because the council president, who had a conflict, presided over the proceedings, even though he did not discuss or vote on the matter." As per Kole Article, citing *Beacon Hill Farm. LLC v. Marlboro*, unreported. WL1161361 (Law Div. 2006). Accordingly, no Elected Official or Employee shall preside over a meeting (including a committee meeting) when such Elected Official or Employee has a conflict of interest.

Doctrine of Necessity

New Jersey conflicts of interest case law has established a "doctrine of necessity" principle that will "be invoked in those circumstances in which there is a pressing public need for action (that is, the matter cannot be laid aside until another date), there is no alternative forum which can grant the same relief and the body is unable to act without the members in conflict taking part." *Allen v. Toms River Regional Board of Education*, 233 N.J. Super. 642 (Law Div. 1989). In the event the Downe Township COI Attorney or the Local Finance Board opines that the doctrine of necessity principle applies, then the Elected Officials may act, consistent with such doctrine.

CONSEQUENCES OF VIOLATION

Violation of this policy by Elected Officials will be addressed consistent with Applicable Law. Violation of this policy by Employees can lead to disciplinary action, up to and including termination of employment.

REPORTS TO THE DOWNE TOWNSHIP GOVERING BODY

The Downe Township COI Attorney shall report to the Downe Township Governing Body at periodically about any new conflicts of interest concerning any Elected Official, the Administrator or any department heads of Downe Township that have arisen since the last report to the Downe Township Governing Body and how such conflicts were addressed in light of this policy.

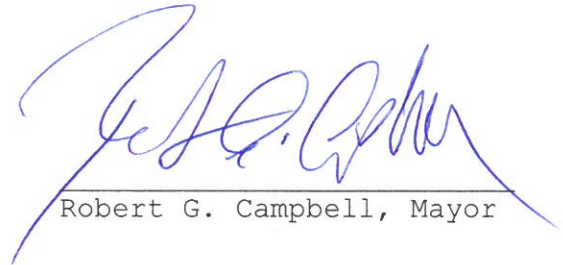
PERIODIC REVIEW OF POLICY

From time-to-time, the Personnel Committee shall review this policy to insure conformity with Applicable Law and to consider whether any changes should be made to this policy in the best interests of Downe Township. Following such review, if the Personnel Committee believes that any changes are appropriate, the Personnel Committee shall report such suggested changes to the Downe Township Governing Body.

THIS RESOLUTION was adopted by the Township Committee of the Township of Downe on October 12, 2020.

ATTEST:


Nadine E. Lockley, Municipal Clerk


Robert G. Campbell, Mayor

C E R T I F I C A T I O N

I, **NADINE E. LOCKLEY, RMC, CMR**, Municipal Clerk of the Township of Downe, County of Cumberland, State of New Jersey do hereby certify the foregoing to be a true and accurate copy of the Resolution adopted by the Downe Township Committee of the Township of Downe, County of Cumberland, State of New Jersey, at their Regular Meeting held on October 12, 2020 at 7:00 pm at the Municipal Complex.

Date

NADINE E. LOCKLEY, RMC, CMR
Municipal Clerk