LONNI MILLER RYAN, APPELLANT, v. LOCAL FINANCE BOARD, RESPONDENT.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-003430-23 Case Type: State Agency Agency Docket No. C17-027 ON APPEAL FROM: A Final Decision of the Local Finance Board Sat Below: Gail M. Cookson, ALJ

BRIEF OF APPELLANT LONNI MILLER RYAN

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TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES
(continued)

CASES **Brief Page**

TABLE OF AUTHORITIES
(continued)

RULES AND STATUTES **Brief Page**

OTHER

TABLE OF JUDGES, ORDERS, AND RULINGS

INDEX OF TRANSCRIPTS

PRELIMINARY STATEMENT

Petitioner Lonni Miller Ryan (hereinafter "Petitioner" or "Mrs. Ryan"), former Councilwoman for the Township of Wayne, appeals from the June 6, 2024 final agency decision of the Local Finance Board (the Board) adopting with modifications the initial decision of Administrative Law Judge (ALJ) Gail Cookson, which found that Petitioner violated the Local Government Ethics Law (LGEL), N.J.S.A. 40A:9-22.5(c) and (d).

The underlying Board decision arises from a complaint (the Complaint) to the Board alleging that Mrs. Ryan violated the LGEL by voting on the appointment of a tax attorney for the Township while Mrs. Ryan's own tax appeal was pending. The Complaint was conspicuously filed in 2017, amid an acrimonious political campaign in which Mrs. Ryan's opponent made Mrs. Ryan's personal finances a focal point of the race.

The Board issued a Notice of Investigation in September 2018. In December 2022, four years after the Notice of Investigation, five years after the Complaint was filed, and nine years after Mrs. Ryan cast a vote as councilwoman for the Township of Wayne's tax attorney, the Board issued a Notice of Violation to Mrs. Ryan based on N.J.S.A. 40A:9-22.5 (c) and 40A:9-22.5 (d). There was no evidence that Mrs. Ryan intended to use her official position to secure an unwarranted advantage in violation of N.J.S.A. 40A:9-

22.5 (c). Nor was there any evidence that Mrs. Ryan had a direct or indirect financial or personal involvement that might reasonably have been expected to impair her objectivity or independence of judgment as required to find a violation of N.J.S.A. 40A:9-22.5 (d).

Notwithstanding the overwhelming lack of evidence to support the alleged violations of the LGEL, and despite the clear evidence that the baseless Complaint was nothing more than an effort of political gamesmanship, the Board found Mrs. Ryan's actions violated the LGEL. Because the Board's decision lacks foundation in law or fact, it must be vacated.

PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

In 2010, Mrs. Ryan was appointed as Councilwoman in the Township of Wayne. (Pa25.)[2] She was subsequently elected in a special election to serve an unexpired term as Councilwoman-at-Large. Ibid.

In 2012, Mrs. Ryan and her husband exercised their constitutional right as citizens and filed a tax appeal for their home at 87 Lake Drive East, believing that the value of their home had been unreasonably assessed. Ibid.

[1] The facts and procedural history are inextricably intertwined and, accordingly, are addressed together.

[2] "Pa" refers to the Appendix of Appellant, Lonni Miller Ryan.

Prior to doing so, the Ryans sought advice from their attorney, Dan Kehoe, Esq., who advised them that there were no legal restrictions preventing a sitting councilwoman from filing a tax appeal. (Pa25; Pa30-32.) With the advice of counsel, the Ryans' proceeded with their tax appeal and Mrs. Ryan. Subsequently in her capacity as councilwoman, Mrs. Ryan participated in the vote for the appointment of the Township's tax attorney. (Pa25.)

Due to the high number of docketed cases and backlog in the New Jesey Tax Courts, the Ryans' tax appeal was not heard in 2012 and remained pending. Subsequent appeals were automatically filed over the next few years, pending the determination of the initial 2012 appeal. (Pa26.)

In November of 2013, Mrs. Ryan successfully ran for re-election for Councilwoman-at-Large. Between 2014 and 2016, the Ryans' tax appeals had still not been heard and remained pending due to the high number of docketed cases and backlog. Ibid.

In February of 2017, Mrs. Ryan announced her candidacy for the upcoming June 6, 2017 Republican Primary for Mayor of Wayne. At that time, Mrs. Ryan announced plans to not seek re-election for Councilwoman-at-Large because state law prohibited her from seeking election to two positions simultaneously. Mrs. Ryan's opposition was the incumbent Mayor Vergano.

Notably, Mayor Vergano previously had a public dispute with Mrs. Ryan's husband, unrelated to the local political race. Ibid.

In an attempt of political gamesmanship, Mayor Vergano's campaign attempted to make the Ryans' tax appeal a campaign issue, continuously raising the tax appeal and lodging baseless accusations of "financial trouble" as the motivation for filing it. (Pa26-27; Pa40-55.) During the primary campaign, Mayor Vergano spent considerable money on the issue, creating a website and sending multiple mailings, all in an attempt to manufacture negative publicity surrounding the Ryans. (Pa40-55.)

The underlying Complaint to the Board was a continuation of Mayor Vergano's political gamesmanship and an attempt to tarnish Mrs. Ryan's reputation. (Pa1-7.) The Complaint was filed contemporaneously with Mayor Vergano's campaign efforts, by Mark Semeraro – a political insider, and close advisor and major campaign contributor to Mayor Vergano. (Pa27; Pa58-60.) Semeraro's political antics against Mrs. Ryan even included him contacting her mother who was living in Florida and asking her to be featured in an ad opposing her in the mayoral primary. (Pa27.) Filing the complaint was but one of many strategic attacks against Mrs. Ryan by Semeraro on behalf of the Vergano campaign.

In June of 2017, Mrs. Ryan was defeated in the primary for Mayor. She continued to serve the balance of her term as Councilwoman until its expiration on December 31, 2017. (Pa28.) By the end of 2017, the Ryans' tax appeal had still not been heard due to the high number of docketed cases and backlog and remained pending. Ibid. Ultimately, in 2018, after consultation with their attorney and for personal reasons, the Ryans decided to withdraw their pending tax appeal and all subsequent, renewed filings before they had been heard. Ibid.

In September 2018, the Board alerted Mrs. Ryan to the investigation stemming from the Complaint filed in 2017. (Pa8-10.) The Notice of Investigation cited possible violations of several provisions of the LGEL including N.J.S.A. 40A:9-22.5(c), (d), and (g). Ibid. On November 9, 2019, Mrs. Ryan, through counsel, responded to the Notice of Investigation and the allegations in the Complaint. (Pa11-16.)

Following its investigation, the Board concluded that Mrs. Ryan attempted to secure unwarranted privileges or advantages for herself in violation of N.J.S.A. 40A:9-22.5(c) and acted in her official capacity in any matter where she, a member of her immediate family, or a business organization in which she had a direct or indirect financial or personal involvement in violation of N.J.S.A. 40A:9-22.5(d). (Pa17-20.) The Board

dismissed the alleged violation of N.J.S.A. 40A:9-22.5(g), finding there was no reasonable basis for the allegation. Ibid. On December 6, 2022, the Board issued its Notice of Violation finding that Ms. Ryan violated two provisions of the LGEL. Ibid.

On January 9, 2023 Ms. Ryan filed a request for an administrative hearing. (Pa21.) The matter was transmitted by the Department of Community Affairs, Local Finance Board, to the Office of Administrative Law (OAL), where it was filed on February 28, 2023, for plenary hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

The matter was assigned to Gail M. Cookson, ALJ. The parties filed cross-motions for summary decision with supporting materials and replies thereafter. (Pa22-87.)[3]

On February 28, 2024, Judge Cookson issued her initial decision in the matter, finding violations of N.J.S.A. 40A:9-22.5(c) and (d). (Pa88.) With respect to the violation of N.J.S.A. 40A:9-22.5(d), Judge Cookson specifically found that Mrs. Ryan had a disqualifying "direct personal interest" and "indirect pecuniary interest" at the time she voted for the Township's tax

[3] Pursuant to the guidance of the Appellate Division Case Manager, Exhibit B submitted with Respondent's motion for summary decision (Pa67-78) is submitted Appellant's Appendix in the manner and form it was submitted to the ALJ with highlighted portions unable to be removed.

attorney. (Pa94.) However, there was no allegation, nor evidence presented indicating there that Mrs. Ryan sought to confer a non-financial benefit to a blood relative or close friend as required to demonstrate a "direct personal interest." Likewise, there was no evidence that Mrs. Ryan's vote for the Township's tax attorney could financially benefit anyone closely tied to Mrs. Ryan such as an employer or family member, as required to demonstrate an "indirect pecuniary interest."

Moreover, with respect to the violation of N.J.S.A. 40A:9-22.5(c), Judge Cookson's initial decision omitted any factual findings or conclusions of law relative to a violation of subsection (c). (Pa88-94.) Indeed, the unrebutted evidence in the record clearly dispelled any doubt as to Mrs. Ryan's lack of intent to secure an unwarranted privilege or advantage, as required to find a violation of N.J.S.A. 40A:9-22.5(c). (Pa28.) On March 12, 2024 Appellant submitted her written exceptions to Judge Cookson's initial decision with the Board, outlining these clear errors. (Pa96.)

On May 7, 2024 the Local Finance Board held a public meeting where, without further review or discussion, the Board voted to adopt the Initial

Decision of Judge Cookson. (1T, 9:16-25.)[4] The only modification to the decision was to replace the word "alleged" with "found." (Pa112-114.)

Petitioner received the Final Agency Decision on June 6, 2024. (Pa112.) This timely appeal follows. (Pa115.)

STANDARD OF REVIEW

It is well-settled law that "judicial review of agency determinations is limited." Allstars Auto Grp., Inc. v. NJ Motor Vehicle Comm'n., 234 N.J. 150 (2018). Moreover, "[a]n administrative agency's final quasi-judicial decision will be sustained unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." In re Herrmann, 192 N.J. 19, 27-28 (2020) (citing Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1963)).

However, and as applicable to the instant matter, "questions of law are the province of the judicial branch" and the Appellate court is "in no way bound by an agency's interpretation of a statute or its determination of a strictly legal issue, particularly when 'that interpretation is inaccurate or contrary to legislative objectives[.]'" Russo v. Bd of Trustees, Police and Firemen's Retirement Sys., 206 N.J. 14, 27 (2011) (citations omitted).

[4] ("1T") refers to the Transcript of the May 7, 2024 Public Meeting of the Local Finance Board, which was submitted to the court electronically on July 25, 2024 and is included in the hard copies of Appellant's Appendix.

LEGAL ARGUMENT

The Board's Final Decision, adopting the ALJ's flawed initial decision, should be reversed as arbitrary and unreasonable because the finding of violations of the LGEL were not based on facts in the record and are contrary to the statute and interpreting case law.

The LGEL sets forth ethical standards by which local government officers shall abide to avoid conflicts of interest and to promote "the public's confidence in the integrity of its elected and appointed representatives." N.J.S.A. 40A:9-22.2.

Two sections of the LGEL are at issue here. Specifically, the Board found that Mrs. Ryan violated N.J.S.A. 40A:9-22.5 (c) and (d), which provide:

> (c) 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.
>
> (d) No local government officer… 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.

As set forth herein, the record was devoid of any evidence of Mrs. Ryan's intent to secure an unwarranted privilege or advantage as required to find a violation of subsection (c). Also absent from the record was any

evidence to indicate that Mrs. Ryan had a direct or indirect financial or personal involvement that could reasonably be expected to impair her objectivity or independence of judgment to sustain a violation of subsection (d). Rather, the record revealed the misuse of administrative resources for a strategic, political purpose by Mrs. Ryan's former opponent in the 2017 mayoral primary. (Pa25-55.)

Given the lack of evidence to support the alleged violations, and ample evidence to the contrary, Mrs. Ryan respectfully requests this Court reverse the Board's decision as arbitrary and unreasonable.

Point I

The Board's Finding of Violation of N.J.S.A. 40A:9-22.5 (c) Must Be Vacated Because the Finding Was Not Based on Credible Evidence in the Record.

(Raised below at Pa023; Pa084; Pa096)

Pursuant to subsection (c), "[n]o 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 Mondsini v. Local Finance Board, 458 N.J. Super. 290 (App. Div. 2019), the Appellate Division analyzed this provision in depth and held that "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.) That is, "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 herself or another." Ibid. (Emphasis added.)

There was no evidence presented, nor finding of fact made by the ALJ that Mrs. Ryan maintained the requisite intent to sustain a violation of subsection (c). To the contrary, the evidence in the record demonstrated that Mrs. Ryan took affirmative action, consulting with private counsel, to confirm she was permitted to file a tax appeal as a sitting councilwoman. (Pa30-32.) Mrs. Ryan's tax attorney, Daniel G. Keough, Esq., confirmed that no New Jersey state law or statute prohibits or limits any taxpayer's right to file a tax appeal due to the taxpayer holding any political office. Ibid. Based upon the advice of counsel, Mrs. Ryan and her husband proceeded to exercise their constitutional right to file a tax appeal. (Pa25.) Mrs. Ryan's consultation with counsel is the clearest evidence that she lacked the intent necessary to violate subsection (c). Rather, Mrs. Ryan's stated intention when voting for the Township's Tax Attorney was to secure the best representation for the Township. (Pa28.)

Mondsini further addressed the subsection (c) violation – receipt of an unwarranted privilege or advantage. Judge Messano, writing for a unanimous panel, explained that an "unwarranted privilege or advantage" means "a privilege or advantage that is unjustified or unauthorized, one that would permit the municipal official to obtain something otherwise not available to the public at large." Id. at 306 (emphasis in original) (quotations omitted).

Additionally, in In re Zisa, 385 N.J. Super. 188 (App. Div. 2006), the Court interpreted the meaning of "unwarranted" privilege under N.J.S.A. 40A:9-22.5(c). There, a mayor who also owned a real-estate holding company participated in a vote to award a city contract to pave a parking lot in which he leased spaces for his tenant at a nearby office building. Id. at 191, 193. The Court held that, by his vote, the mayor did not secure an unwarranted privilege for himself or his tenant because, "[w]hile it is reasonable to conclude that a paved parking lot is better than an unpaved one, there was no advantage to [the mayor] in having the lot paved for his tenant" since "[t]here [was] nothing in the record . . . to show that the [tenant] required its parking spaces be paved." Id. at 195. The Court further found that the mayor had leased the parking spaces "on the same terms and conditions available to any member of the public," such that "[h]e did not obtain or seek a lesser rate or preferential terms of payment, nor did he 'bump' a member of the public who was seeking to rent

parking space." Id. at 196. Thus, the Court concluded, it was "clear that [the mayor] obtained nothing as a result of [his] vote that could fairly be characterized as an 'unwarranted' privilege or advantage" in violation of N.J.S.A. 40A:9-22.5(c). Ibid.

Similarly, Mrs. Ryan could not have obtained an "unwarranted privilege or advantage" by voting for the Township's tax attorney. The Ryans filed a tax appeal, as is the right of any citizen. Plainly, the Ryan's tax appeal is not an unwarranted privilege because it is "available to the public at large." In re Zisa, 385 N.J. Super. at 196.

Additionally, in view of the tremendous backlog of tax appeals in the Township, Mrs. Ryan's interests in appointing a competent tax attorney were aligned with that of the public. Mrs. Ryan's vote did nothing more than award the contract to the tax attorney, who is obligated to conduct an independent review of each case. The Ryans' tax appeal remained pending as with any other member of the public; Mrs. Ryan did not seek an expedited appeal process or seek preferential terms of review. Ibid. To assume some special treatment would befall Mrs. Ryan would be to assume the appointed Tax Attorney was willing to commit professional malpractice in representing their client, the Township.

Because there was no evidence that Mrs. Ryan intended to secure an unwarranted privilege or advantage, and in view of evidence to the contrary, this Court should reverse the Board's finding of violation with respect to subsection (c).

Point II

The Board's Finding of a Violation of N.J.S.A. 40A:9-22.5 (d) Must Be Vacated Because the Finding Was Not Based on Credible Evidence in the Record and Was Contrary Law.

(Raised below at Pa023; Pa084; Pa096)

Pursuant to 40A:9-22.5 (d), "[n]o 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."

The determination "whether a particular interest is sufficient to disqualify is necessarily a factual one and depends upon the circumstances of the particular case." Grabowsky v. Twp. Of Montclair, 221 N.J. 536, 554 (2015) (quoting Van Itallie v. Bor. of Franklin Lakes, 28 N.J. 258, 268 (1958)). The question is "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." Van Itallie, 28 N.J. at 268.

> 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 incompetency.'** Graham v. United States, 231 U.S. 474, 480 (1913)[.]
>
> [Id. 28 N.J. at 269 (emphasis added).]

A conflicting interest arises when the public official has an interest not shared in common with the other members of the public. Id. at 220-21. Another way of analyzing the issue is to understand that "[t]here cannot be a conflict of interest where there do not exist, realistically, contradictory desires tugging the official in opposite directions." LaRue v. Township of East Brunswick, 68 N.J. Super. 435, 448 (App. Div. 1961).

In Wyzykowski v. Rizas, 132 N.J. 509, 525 (1993), the New Jersey Supreme Court articulated four categories of interests requiring

disqualification: direct pecuniary interests, indirect pecuniary interests, direct personal interests and indirect personal interests. A review of the case law defining and applying these categories of disqualifying interests reveals that they are inapplicable here. Petitioner addresses each of these categories in turn.

A. There was no evidence of a disqualifying "direct pecuniary interest."

A "direct pecuniary interest" occurs "when an official votes on a matter benefiting the official's own property or affording a direct financial gain." Wyzykowski, 132 N.J. at 525 (emphasis added). See Scotch Plains-Fanwood Bd. of Educ. v. Syvertsen, 251 N.J. Super. 566, 569-70 (App. Div. 1991) (holding board member barred from attending executive sessions at which litigation instituted by the member against the board was discussed); Tighe v. Local Finance Board, 97 N.J.A.R. 2d (CAF) 76, 79-81 (finding member of the board of adjustment violated N.J.S.A. 40A:9-22.5(d) when he voted to approve an application involving a business organization in which he had a financial interest); Wargacki v. Local Finance Board, 97 N.J.A.R.2d (CAF) 1 (holding mayor violated N.J.S.A. 40A:9-22.5 (d) when he acted in his official capacity to attempt to establish an amnesty program for illegal multi-family dwellings when the mayor had a direct interest in the program, i.e., the avoidance of monetary penalties arising from multi-family dwellings owned by him);

Catarcio/Cape May County Bridge Comm. v. Local Finance Board, 96 N.J.A.R.2d (CAF) 99 (finding bridge commissioner violated N.J.S.A. 40A:9-22.5(d) when he voted on a resolution providing for a substantial raise in his salary after he assumed full-time administrative duties).

In each case finding a direct pecuniary interest, the government official stood to financially benefit almost immediately from decisions made in their official capacity, profiting their own businesses and properties, or even increasing their salaries. Stated differently, the strong connection between the official's action and the financial benefit to the official was clear on its face. By contrast, Mrs. Ryan did not stand to benefit in the form of a direct financial gain by voting for the Township's tax attorney. Mrs. Ryan's vote did nothing more than appoint the tax attorney to a separate, objective position. The appointed tax attorney is required to represent the interests of their client, the Township. To imply, as the Board has, that Mrs. Ryan would have received some benefit in the form of favorable treatment in her own tax appeals is to assume the tax attorney would have committed professional malpractice and violated the Rules of Professional Conduct. Such a speculative, remote connection cannot form the basis for a violation of subsection (d) which requires a clear financial benefit to the acting government official.

Respondent incorrectly argued below that, because the Ryans had a tax appeal pending when Mrs. Ryan voted for the Township's tax attorney, members of the public could perceive that she stood to benefit in the form of a favorable result in her tax appeal. Fatal to Respondent's argument is the lack of logical nexus between Mrs. Ryan's votes for the Township tax attorney and the purported benefit, namely, a favorable result in the Ryans' tax appeal. Respondent's logic is flawed in that it imputes a "general feeling of suspicion" towards all aspects of local government to the public at large. Van Itallie v. Franklin Lakes, 28 N.J. 258, 269 (1958). Again, it is important to distinguish the voting for the tax attorney position in general, from that of a specific vote tailored to the Ryans' direct interest. This is not a situation where Mrs. Ryan voted on her own tax appeal case. Ultimately, that vote never even occurred once the tax appeal was withdrawn.

Here, and again, the context surrounding the complaint, filed amid an acrimonious political campaign, is important. In an act of political gamesmanship, Mrs. Ryan's political opponent made Mrs. Ryan's tax appeal a focal point of his campaign. (Pa40-55.) Even assuming a reasonable member of the public was unable to discern the political tactics at play in her opponent's media campaign, the Township Attorney dispelled any possibility of a public perception of impropriety, stating: "[I]t is general practice for an

outside agency from another municipality to serve in the township's stead in the event of a perceived conflict." (Pa49.)

Mrs. Ryan's vote for the Township tax attorney is plainly, too far removed from the actual disposition of her own tax appeal to support a subsection (d) violation for a direct pecuniary conflict. Respondent's unfounded implication that Mrs. Ryan would have received some benefit in the form of favorable treatment in her own tax appeals presumes that the Tax Attorney would have committed professional malpractice, disregarding his legal duty, and imputes the same faulty presumption to the public. This faulty reasoning was likewise relied upon in the initial decision of Judge Cookson. Specifically, Judge Cookson explained her finding of a "potential for conflict of interest," as follows:

> [P]etitioner voted on the appointment of tax counsel to the municipality who would appear in opposition to those appeals; the latter knowing that petitioner served on the council and voted on their appointments.

(Pa94.) (Emphasis added.) Judge Cookson found the potential for a conflict of interest not based on the conduct of the Petitioner, but based on the assumption of future improper conduct by the appointed tax attorney. This erroneous reasoning, adopted by the Board in its Final Decision, makes clear that the tax

attorney's future objectivity and independence of judgment are the focus of the inquiry, not the Petitioners.

Such a speculative, remote connection cannot form the basis for a violation of N.J.S.A. 40A:9-22.5 (d). Accordingly, there is no basis for a violation of N.J.S.A. 40A:9-22.5 (d) on these grounds.

B. There was no evidence of a disqualifying "indirect pecuniary interest."

A situation involving an "indirect pecuniary interest" occurs "when an official votes on a matter that financially benefits one closely tied to the official, such as an employer, or family member." Wyzykowski, 132 N.J. at 525. See Griggs v. Borough of Princeton, 33 N.J. 207 (1960) (setting aside planning board's actions because board member's family had financial interest in decisions); Pyatt v. Mayor and Council of Dunellen Borough, 9 N.J. 548 (1952) (setting aside ordinances where private company benefited from enactment of ordinances employed two councilmembers); Care of Tenafly, Inc. v. Tenafly Zoning Bd. of Adjustment., 307 N.J. Super. 362 (App. Div. 1998), certif. denied, 154 N.J. 609 (1998) (finding conflict where zoning board member's mother was ninety-five percent owner of corporation neighboring property at issue); Sokolinski v. Woodbridge Township Municipal Council, 192 N.J. Super. 101 (App. Div. 1983) (board members disqualified from variance applications for property owned by board of education where employed by or

married to individuals employed by board of education); Aldom v. Roseland Borough, 42 N.J. Super. 495, 505-08 (App. Div. 1956) (zoning ordinance amendment void when councilman voting for amendment was employed by corporation benefiting from zoning change).

A review of cases finding an indirect pecuniary interest indicates that the basis of such a disqualifying conflict is nearly identical to that of a direct pecuniary interest, with the exception that the beneficiary of the pecuniary interest is a family member, employer, or other individual closely connected to the government official (as opposed to the government official themselves). The "indirectness" comes from the fact that the beneficiary of the pecuniary interest is someone other than the government official, i.e., a family member or employer. However, under this analysis, the purported benefit must still be sufficiently connected with the government official's action such that there is a realistic opportunity for "contradictory desires tugging the official in opposite directions." LaRue, 68 N.J. at 448.

For example, in Care of Tenafly, Inc. v. Tenafly Zoning Bd. of Adjustment, a planning board member voted on a site plan application for the construction of a supermarket and shopping center just fifty feet from commercial property owned by the board member's eighty-three-year-old mother. 307 N.J. Super. at 368. The board member's mother had a sufficient

interest in the outcome of the site plan application, as a commercial property owner across the street. Id. at 372. Additionally, the board member acknowledged that his mother "depended on the income derived from her commercial enterprise 'to live on.'" Ibid. Accordingly, the board member's expressed interest in the financial integrity of his mother's commercial property was at stake when the board member was presented with and voted on the site plan application. Ibid.

Care of Tenafly makes clear that the "indirect pecuniary interest" analysis requires a strong connection between the government official's action and the possible financial benefit to a beneficiary other than the government official. Here, for many of the same reasons discussed in Point II. A. supra, no such connection exists.

There is no evidence of an indirect pecuniary interest impacting Mrs. Ryan at the time she cast her vote for the Township's tax attorney because there is no evidence that a family member, employer, or someone close to Mrs. Ryan would financially benefit from Mrs. Ryan's vote. While Mrs. Ryan's husband was in a similar position with respect to the Ryans' tax appeal, he, like Mrs. Ryan, did not stand to financially benefit from Mrs. Ryan's vote for the Township's tax attorney. Mrs. Ryan's vote was far too remote and

nebulous from the disposition of the Ryans' tax appeal to be considered a disqualifying indirect conflict of interest. See, Point II. A. supra.

In the absence of any evidence that Mrs. Ryan had a disqualifying indirect pecuniary interest at the time she voted as councilwoman for the Township's tax attorney, a finding of a violation of N.J.S.A. 40A:9-22.5 (d) cannot be sustained on these grounds.

C. There was no evidence of a disqualifying "direct personal interest."

A disqualifying "direct personal interest" exists where "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." Wyzykowski, 132 N.J. at 525.

Barrett v. Union Township Committee, 230 N.J. Super. 195 (App. Div. 1989). is instructive. In Barrett, the Court found a disqualifying personal interest where a councilman voted in favor of a specific zoning ordinance amendment sought by the owners of a hospital facility. The councilman's elderly mother was entirely dependent upon the hospital facility, and the amendment would have permitted the owners to construct another continuing care facility. The Appellate panel concluded that "[i]t would strain credulity to conclude that [the councilman] did not have an interest in seeing that his invalid mother was properly cared for in the facility that was owned and operated by [the owners of his mother's nursing home]." Id. at 204. Observing

that the strong potential for "psychological influences," the panel held that he should not have been involved in the matter and invalidated the ordinance. Id. at 200, 204-05.

The evidence presented to the Board cannot support the finding of a disqualifying direct personal interest. There was no evidence presented, nor findings of fact made by Judge Cookson indicating that a blood relative or close friend of Mrs. Ryan would benefit in a non-financial way from Mrs. Ryan's vote for the Township's tax attorney. (Pa88-95.) Indeed, the thrust of the underlying Complaint is that Mrs. Ryan's vote would have financially benefitted the Ryans based on the assumed positive resolution of their tax appeal. (Pa1-7.) Notwithstanding Petitioner's arguments against that assumption, see supra, Point II. A and B, the facts plainly do not support the finding of a disqualifying direct personal interest. Accordingly, a violation of N.J.S.A. 40A:9-22.5 (d) cannot be sustained on these grounds.

D. There was no evidence of a disqualifying "indirect personal interest."

An "indirect personal interest" exists "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 the organization further its policies." Wyzykowski, 132 N.J. at 525-26. See Marlboro Manor, Inc. v. Montclair

Township Bd. of Comm'rs., 187 N.J. Super. 359 (App. Div. 1982) (vacating resolution denying place-to-place transfer of liquor license based on the disqualifying interest of voting council members who were members of a church which was a principal objector to the transfer); Zell v. Roseland Borough, 42 N.J. Super. 75, 82 (App. Div. 1956) (invalidating zoning ordinance amendment that benefited a church in which participating planning board member was a member); Gunthner v. of Bay Head Borough Planning Bd., 335 N.J. Super. 452, 461 (Law. Div. 2000) (conflict of interest where planning board members were members of a yacht club impacted by the development application); Scott v. Town of Bloomfield, 94 N.J. Super. 592, 600-01 (Law Div. 1967), aff'd., 98 N.J. Super. 321 (App. Div. 1967), appeal dismissed, 52 N.J. 473 (1968) (invalidating resolution authorizing the lease of municipal property to the boys' club resulting, in part, from the mayor's affiliation with the organization).

Here, there was no evidence presented to support a finding of a disqualifying "indirect personal interest." There was no evidence presented, nor findings of fact made to indicate that Mrs. Ryan was a member of any organization that stood to benefit from her vote for the Township's tax attorney. Accordingly, there is no basis to find a violation of N.J.S.A. 40A:9-22.5 (d) on these grounds.

At bottom, the record was devoid of any facts to indicate that Mrs. Ryan had a direct or indirect, personal or financial disqualifying conflicting interest when she voted for the Township's tax attorney. Accordingly, the Board's finding of a violation of 40A:9-22.5 (d) must be vacated.

CONCLUSION

As the record below makes clear, Mrs. Ryan did nothing more than exercise her private, constitutional right to file a tax appeal challenging the assessed value of their home. The Complaint filed against Mrs. Ryan was the unfortunate result of political gamesmanship arising out of a contested local election. Mrs. Ryan did not use her office to secure any privilege or advantage to herself or her husband. Nor did Mrs. Ryan take any action as an elected official where she had a direct or indirect financial or personal involvement that might reasonably have been expected to impair her objectivity.

Accordingly, Mrs. Ryan requests this Court reverse the decision of the Board as arbitrary and unreasonable.

Respectfully submitted,

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Date: February 21, 2025

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April 28, 2025

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Re: Lonni Miller Ryan v. Local Finance Board
Docket No. A-3430-23

Civil Action: On Appeal from a Final Administrative Determination of the Local Finance Board

Letter Brief on behalf of Respondent, Local Finance Board on the Merits of the Appeal

Dear Ms. Hanley:

Please accept this letter brief on behalf of Respondent Local Finance Board on the merits of this appeal.

TABLE OF CONTENTS

PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS[1]

Appellant Lonni Miller Ryan served as a council member for the Township of Wayne from 2010 until the expiration of her term on December 31, 2017. (Aa90)[2]. On seven occasions between 2013 and 2017, Ryan, in her role as a council member, voted in favor of resolutions "Awarding Special Tax Counsel - RFP" to the law firm, Dorsey and Semrau, LLC ("Dorsey"). Ibid. Each resolution awarded a contract for Dorsey to serve as Special Tax Counsel for the Township to represent Wayne in ongoing tax appeals for those years. (Aa67-74).

At the same time, Ryan and her spouse were pursuing an ongoing tax

[1] The procedural history and facts are closely related and are therefore combined for efficiency and the court's convenience.

[2] "Aa" refers to Appellant's Appendix. "Ab" refers to Appellant's Brief.

appeal against the Township regarding the tax valuation of their property for the years 2012 through 2017. (Aa91). Prior to filing the tax appeal, Ryan sought advice from her private attorney as to whether, as a council member, she could file a tax appeal with the Township. (Pa30-32.) Ryan did not, however, seek advice on whether she should recuse herself from voting on the appointment of Special Tax Counsel while her appeal was pending. Ibid. As Special Tax Counsel, Dorsey represented the Township in opposition to Ryan's appeal. Ibid. Ryan's tax appeal was eventually withdrawn. (Aa34-39).

On December 6, 2022, the Board issued a Notice of Violation against Ryan, finding that she had violated two provisions of the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 to -22.25 (the "LGEL"), specifically N.J.S.A. 40A:9-22.5(c) and (d). (Aa18-20). These provisions outline the code of ethics to which local government officers are subject. Subsection (c) prohibits them from using their position or information obtained therefrom to obtain "unwarranted privileges or advantages." (Aa19). Subsection (d) prohibits them from acting in their official capacity in a matter in which they have a "direct or indirect personal or financial involvement." Ibid. The Board issued a penalty of $100.00 for the violation of subsection (c) and $100.00 for the violation of subsection (d), totaling $200.00. Ibid. On January 9, 2023, Ryan requested that the matter be transmitted to the Office of Administrative Law as a contested

case. (Aa21). On January 16, 2024, the parties filed cross motions for summary decision. (Aa89).

On February 28, 2024, the Honorable Gail M. Cookson ("ALJ") issued an Initial Decision granting summary decision in favor of the Board on both charges. (Aa88-95). The ALJ found immaterial Ryan's assertions that, but for a complaint likely filed by her primary opponent in the mayoral race in 2017, the Board would never have investigated these allegations. (Aa91). The ALJ was persuaded by the fact that Ryan's choice not to recuse herself from votes on the tax attorney resolutions from 2013 to 2017 preceded the 2017 campaign. Ibid.

In considering the application of N.J.S.A. 40A:9-22.5(d), which does not require intent, the ALJ found that Ryan had both an "indirect pecuniary interest" and a "direct personal interest" in the appointments of tax counsel that gave rise to the potential for conflict. (Aa94). The ALJ reasoned that Ryan "voted on the appointment of tax counsel to the municipality who would appear in opposition to those appeals; the latter knowing that the petitioner served on the council and voted on their appointments." Ibid. Regarding N.J.S.A. 40A:9-22.5(c), the ALJ relied on the same facts and found that the Board was entitled to summary decision. (Aa7). The ALJ also determined that the $200 penalty was appropriate. (Aa7-8). (Aa94-95). On March 29, 2023, the Board issued a final

agency decision adopting the ALJ's initial decision and modifying the first sentence. (Aa113). This appeal followed.

ARGUMENT

THE BOARD'S FINDING OF VIOLATIONS OF N.J.S.A. 40A:9-22.5 (C) AND (D) SHOULD BE AFFIRMED BECAUSE IT WAS REASONABLE AND SUPPORTED BY SUFFICIENT CREDIBLE EVIDENCE.

By voting for the attorney who would represent the opposing party in her tax appeal, Ryan took an official act that created an inherent conflict of interest. In continuing to vote for Dorsey on six additional occasions between 20212 and 2018, Ryan demonstrated intent to secure an unwarranted advantage. The Board's findings should be affirmed.

An agency's final decision is entitled to "substantial deference." In re Herrmann, 192 N.J. 19, 28 (2007); see In re Carroll, 339 N.J. Super. 429, 437 (App. Div. 2001) (attaching a strong presumption of reasonableness to the agency's decision). Appellate courts have a limited role in reviewing the decisions of an administrative agency and will only reverse such action only if it is "arbitrary, capricious or unreasonable or is not supported by substantial credible evidence in the record as a whole." In re Adoption of Amendments to NE, Upper Raritan, Sussex Cty. Water Quality Mgmt. Plans, 435 N.J. Super.

571, 582 (App. Div. 2014). Thus, a court must affirm the decision if the evidence supports it, even if the court may question its wisdom or would have reached a different result. Campbell v. N.J. Racing Comm'n, 169 N.J. 579, 587 (2001); see In re Herrmann, 192 N.J. at 28 ("Deference controls even if the court would have reached a different result"). "The burden of demonstrating that the agency's action was arbitrary, capricious, or unreasonable rests upon the person challenging it." In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div. 2006).

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 by the LGEL are applicable to all local government officers and employees. N.J.S.A. 40A:9-22.3. The statute recognizes that public office and public employment are a public trust, and that the democratic form of government depends upon the public's confidence in the integrity of its elected and appointed representatives. N.J.S.A. 40A:9-22.2.

Ryan had a tax appeal case adverse to Wayne. Dorsey represented Wayne in that appeal. Nevertheless, rather than recusing herself, Ryan acted in her official capacity year after year to keep Dorsey in that position. By voting for the tax attorney who would represent Wayne while simultaneously pursuing a tax appeal against Wayne, Ryan effectively chose her opponent. This constitutes an unwarranted privilege or advantage that Ryan secured for herself

using her official position, and the public could reasonably believe that this conflict of interest impaired her objectivity. Therefore, the ALJ properly considered the undisputed material facts in the record, applied them to the law, and correctly found that Ryan had violated the LGEL.

Under N.J.S.A. 40A:9-22.5(d), it is a conflict of interest for a local government officer or employee to "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." N.J.S.A. 40A:9-22.5(d). The issue is not the government officer's subjective intent; the focus is on whether the public could reasonably perceive a conflict of interest in that officer's conduct.

Under this provision, even the perception of unethical conduct can seriously damage the public trust and confidence. N.J.S.A. 40A:9-22.2; see also Piscitelli v. City of Garfield Zoning Bd. of Adj., 237 N.J. 333, 351 (2019). Thus, proof of actual dishonesty or an actual conflict of interest is not required to establish a breach of the law; instead, "[t]he key is whether there is a potential for conflict." Shapiro v. Mertz, 368 N.J. Super. 46, 51 (App. Div. 2004) (citing Wyzkowski v. Rizas, 132 N.J. 509 at 524); Mountain Hill, L.L.C. v. Twp. Committee of Twp. of Middletown, 403 N.J. Super. 146 (App. Div. 2008). In

each case, the decisive question is whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the official to depart from their sworn public duty. Van Itallie v. Franklin Lakes, 28 N.J. 258, 268 (1958); see also Shapiro, 368 N.J. Super. at 53; Lafayette v. Bd. of Chosen Freeholders, 208 N.J. Super. 468, 473 (App. Div. 1986) ("The question is whether there exists an interest creating a potential for conflict and not whether the official yielded to the temptation of it.").

"A conflicting interest arises when the public official has an interest not shared in common with the other members of the public." Shapiro, 368 N.J. Super. at 53. A public official's interests can be disqualifying whether they are financial or personal. Ibid. Thus, the Supreme Court has recognized four types of situations that require disqualification:

> (1) 'Direct pecuniary interests,' when an official votes on 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, 132 N.J. at 525-26.]

If the circumstances of the particular case fall into one of the four categories outlined above, the interest is necessarily determined to be disqualifying to avoid even the appearance of bias. Ibid. Once a disqualifying interest is found, "an inquiry into an official's motive is unnecessary." Grabowsky v. Township of Montclair, 221 N.J. 536, 554 (2015) (citing McNamara v. Borough of Saddle River, 64 N.J. Super. 426, 429 (App. Div. 1960) ("If there is 'interest,' there is disqualification automatically, entirely without regard to actual motive, as the purpose of the rule is prophylactic[.]")).

The ALJ correctly found that Ryan's failure to recuse herself from votes on the tax attorney created "a potential for conflict" as an "indirect pecuniary interest" and a "direct personal interest." (Aa94). The circumstances of Ryan's pending tax appeal could reasonably be interpreted to sway her judgment in a number of ways. Specifically, it could give rise to questions as to whether Ryan could properly oversee a firm that would be opposing her in a proceeding where she had such a significant interest, whether she picked the firm because it could best represent the Township or because it would result in a better outcome for her litigation, or whether she would try to leverage the award of a monetary

contract to the firm into favorable treatment in the tax appeal. For a subsection (d) violation, whether Ryan had any of these ulterior motives is immaterial. It is further immaterial whether Ryan's appeal ultimately resulted in a financial or personal benefit to Ryan. What is material is that at the time of the vote, Ryan appeared to have acted with conflicting interests tugging at her, namely her personal interest in the state of her tax appeal and the public interest in appointing a qualified attorney to represent the municipality. In voting on the appointment of Dorsey, Ryan acted in her official capacity as a councilwoman in a matter where she had a direct financial and personal involvement in violation of N.J.S.A. 40A:9-22.5(d).

Under N.J.S.A. 40A:9-22.5(c), "[n]o local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others." An "unwarranted privilege or advantage" is "one that is unjustified or unauthorized, one that would permit the municipal official to obtain something otherwise not available to the public at large." In re Zisa, 385 N.J. Super. 188, 196 (App. Div. 2006). An official could be subject to penalties under subsection (c) if "the privilege or advantage was secured through the unauthorized exercise of an official's duties, or the exercise of those duties in an unauthorized manner." Mondsini v. Local Finance Bd., 458 N.J. Super. 290, 306 (App. Div. 2019). Thus, using one's public position to

benefit financially is an unwarranted privilege or advantage.

Unlike a violation of N.J.S.A. 40A:9-22.5(d), the local official's intent is relevant under this subsection. However, our courts generally hold that intent can be demonstrated by circumstantial evidence. See, e.g., Bergen Commercial Bank v. Sisler, 157 N.J. 188, 207-08 (1999) (employment discrimination); State v. Rogers, 19 N.J. 218, 228 (1955) (criminal prosecutions). Intent can be "inferred from all that [a party] did and said, and from all the surrounding circumstances of the situation under investigation." Mayflower Indus. v. Thor. Corp., 15 N.J. Super. 139, 162 (Ch. Div. 1951), aff'd, 9 N.J. 605 (1952). Indeed, circumstantial evidence "often is more certain, satisfying, and persuasive than direct evidence." In re Lewis, 11 N.J. 217, 221 (1953) (internal quotation marks omitted); State v. Mayberry, 52 N.J. 413, 437 (1968).

Here the there is sufficient circumstantial evidence that Ryan violated N.J.S.A. 40A:9-22.5(c) because the facts demonstrate that she intended to secure an unwarranted privilege for herself and another. She served on the council for seven years. During four of those years, she had a tax appeal pending, and she voted seven times to select a particular firm as the tax attorney for the municipality. In other words, she participated in deciding which attorney would litigate against her in her appeal. Ryan's vote authorizing Dorsey, while she had an ongoing proceeding

against the selected tax counsel, is an inherent conflict, and constitutes the exercise of her authority in an unauthorized manner. Mondsini, 458 N.J. Super. at 306.

Ryan was aware that filing a tax appeal in her municipality while sitting on the Council could be problematic; in fact, she asked her private attorney about whether she could file a tax appeal in her own municipality as a public official. Yet after she filed her tax appeal and it became time to vote for the Township's Special Tax Counsel, she chose not to consult with her private attorney as to whether voting to appoint the individual who would be opposing her in her tax appeal would create a conflict of interest, and she chose not to recuse herself. In fact, she did so seven times without recusing herself from the vote. Clearly she intended to vote on these resolutions which put her in a position different from the average member of the public, since she did so repeatedly.

Since Ryan had the unusual advantage or privilege of selecting her opponent's counsel in her tax matters, there is sufficient circumstantial evidence that she intended to use her office to provide herself with an unwarranted privilege or advantage. No other citizens of the Township had the luxury of choosing their adversary in tax appeals or influencing their adversary's continued award of public contracts with the Township. Zisa, 385 N.J. Super. at 196. As a public official, Ryan should have recused herself from any votes involving the Wayne's tax litigation due to her ongoing tax appeal. Her failure to do so evidences her intent to

use her office to provide herself with an unwarranted privilege or advantage. Ryan's decision to vote on a matter directly related to her pending tax appeals constitutes the exercise of her power in an unauthorized manner. Mondsini, 458 N.J. Super. at 306. For these reasons, the ALJ properly found that Ryan had violated subsection (c).

Ryan relies on two cases that are factually distinct from the circumstances here. In Mondisini, because of the gasoline shortage in the aftermath of Sandy, Mondsini permitted certain essential employees to fuel their personal vehicles from the Authority's gas pump. Ibid. She also permitted a non-essential employee to do so, but unbeknownst to her, that employee fueled two personal vehicles. Ibid. Mondsini, 458 N.J. Super. at 306. The court in Mondisini reasoned that in evaluating a violation of subsection (c), the determination must be based "on the circumstances of the specific case." Ibid. Here, unlike Mondisini, which involved a single unintentional error. Ryan considered votes to award contracts over seven years on seven occasions. Not only was there no emergency as in Mondisini, it indicated the requisite intent to secure an unwarranted privilege or advantage in violation of subsection (c). Likewise, contrary to Ryan's claim, In re Zisa, 385 N.J. Super. at 196, is not applicable here. In that case, the court reasoned that the elected official, who had voted on a resolution to award a contract to pave a parking lot in which he leased spaces, did not violate the LGEL because he did not receive any unwarranted

privilege or advantage from his official act. The court found that he rented the spaces "on the same terms and conditions available to any member of the public. He did not obtain or seek a lesser rate or preferential terms of payment, nor did he 'bump' a member of the public and secure these parking places before a member of the public who was seeking to rent parking space." Ibid. Here, on the other hand, Ryan obtained a benefit not available to the public and a potential benefit to her own property interest in a pending tax case. The citizens in the Zisa case could purchase parking in the new lot. Ibid. Ryan's constituents could not select their opposing counsel in tax appeals. Further, unlike in Zisa, the beneficiary of Ryan's action was not attenuated. The Board's conclusion that Ryan violated N.J.S.A. 40A:9-22.5(c) was correct and should be affirmed.

CONCLUSION

For these reasons, the court should affirm the Board's finding that Ryan violated N.J.S.A. 40A:9-22.5(c) and (d) and affirm the $200 penalty issued.

Respectfully submitted,

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LONNI MILLER RYAN, APPELLANT, v. LOCAL FINANCE BOARD, RESPONDENT.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-003430-23 Case Type: State Agency Agency Docket No. C17-027 ON APPEAL FROM: A Final Decision of the Local Finance Board Sat Below: Gail M. Cookson, ALJ

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

PRELIMINARY STATEMENT

The Respondent Local Finance Board's (hereinafter "Respondent" or "Board") finding of violations of the Local Government Ethics Law (LGEL) by Mrs. Ryan lacked foundation in law or fact. Respondent's brief, rife with unsubstantiated legal conclusions, further proves the point.

Rather than addressing the absence of any credible evidence or intent or of a conflict of interest, Respondent continues to rely on speculation and conjecture in support of the deeply flawed decision below. Indeed, Respondent has and continues to ignore the credible evidence demonstrating that Mrs. Ryan lacked the requisite intent to use her official position to secure an unwarranted advantage in violation of N.J.S.A. 40A:9-22.5(c). Likewise, Respondent fails to present any evidence or argument justifying its position that there was a potential for a conflict of interest as an "indirect pecuniary interest" and a "direct personal interest" in violation of N.J.S.A. 40A:9-22.5(d).

The Board's decision is not entitled to deference where, as here, its interpretation of law is erroneous and unsupported by credible evidence in the record.

LEGAL ARGUMENT

The Board's Final Decision, adopting the ALJ's flawed initial decision, should be reversed as arbitrary and unreasonable because the finding of violations of the LGEL were not based on facts in the record and are contrary to the statute and interpreting case law.

As set forth in Mrs. Ryan's opening brief, the record below was devoid of any evidence of Mrs. Ryan's intent to secure an unwarranted privilege or advantage as required to find a violation of N.J.S.A. 40A:9-22.5 (c). Unsurprisingly, Respondent fails to come forward with any direct or circumstantial evidence of the requisite intent, and continues to ignore or misconstrue evidence to the contrary.

Likewise, Respondent fails to come forward with any credible evidence or argument indicating that Mrs. Ryan had, or could be perceived as having, a direct or indirect financial or person involvement that could reasonably be expected to impair her objectivity or independence of judgment as require to sustain a violation of N.J.S.A. 40A:9-22.5 (d). Respondent fails to address the statements of the township's attorney regarding the mechanism for resolving conflicts of interest which clearly dispelled any potential for perceived conflicts. See Pa48.

Fundamentally, the record below does not support a violation of N.J.S.A. 40A:9-22.5 (c) or (d). Accordingly, Mrs. Ryan submits that the findings of violation must be set aside.

Point I

Respondent Fails to Present Any Direct or Circumstantial Evidence of Mrs. Ryan's Intent to Secure an Unwarranted Privilege or Advantage to Sustain the Violation of N.J.S.A. 40A:9-22.5(c).

It is undisputed that a violation of N.J.S.A. 40A:9-22.5(c) requires proof that Mrs. Ryan acted with the intent to secure an unwarranted privilege or advantage. See Mondsini v. Local Finance Board, 458 N.J. Super. 290 (App. Div. 2019). Respondent concedes this point. See Db11.

To be clear, the ALJ made no findings of fact nor conclusions of law with respect to the violation of N.J.S.A. 40A:9-22.5(c). See Pa88-95. The first mention of this section of the LGEL appears at the end of the ALJ's written opinion under the heading "ORDER." See Pa94. There was no factual basis, nor legal analysis with respect to Mrs. Ryan's "intent to secure an unwarranted privilege or advantage," necessary elements to sustain a violation N.J.S.A. 40A:9-22.5(c).

Moreover, the unrebutted evidence demonstrates that Mrs. Ryan did not intend to secure an unwarranted privilege or advantage. Mrs. Ryan took affirmative action, consulting with private counsel, to confirm she was permitted to file a tax appeal as a sitting councilwoman. See Pa30-32. Mrs. Ryan's tax attorney, Daniel G. Keough, Esq., confirmed that no New Jersey state law or statute prohibits or limits any taxpayer's right to file a tax appeal due to the taxpayer holding any political office. Ibid. Based upon the advice of counsel, Mrs. Ryan and her husband proceeded to exercise their constitutional right to file a tax appeal. See Pa25. Mrs. Ryan's consultation with counsel is the clearest evidence that she lacked the intent necessary to violate subsection (c). Indeed, Mrs. Ryan's sworn intention when voting for the Township's Tax Attorney was to secure the best representation of the Township. See Pa28.

The only "circumstantial evidence" that Respondent offers as proof that Mrs. Ryan "intended to use her office to secure an unwarranted privilege or advantage" is that Mrs. Ryan did not consult with her tax attorney *again* before voting to appoint the township's tax attorney. See Db12. Respondent's suggestion that the failure to re-consult with counsel is suggestive of Mrs. Ryan's malintent strains credulity. Indeed, this fact is further circumstantial evidence that Mrs. Ryan was satisfied with her tax attorney's initial advice that her role as councilwoman was wholly distinct from her action of filing a tax

appeal as a private citizen. Stated differently, this is evidence of her lack of intent to secure an unwarranted privilege or advantage.

The inference of intent urged by Respondent lacks any evidentiary support and directly conflicts with Mondsini, which emphasizes that "a public official only violates [subsection (c)] if she uses or attempts to use her official position with the intent to secure unwarranted advantages." Mondsini, 458 N.J. Super. at 305-06.

Because there was no evidence that Mrs. Ryan intended to secure an unwarranted privilege or advantage, and in view of evidence to the contrary, this Court should reverse the Board's finding of violation with respect to subsection (c).

Point II

The Board's Finding of a Violation of N.J.S.A. 40A:9-22.5(d) Was Not Based on Credible Evidence in the Record and Was Contrary to Law.

As set forth in Petitioner's opening brief, a violation of N.J.S.A. 40A:9-22.5(d), it is a conflict of interest for a local government officer or employee to "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." See also

Wyzykowski v. Rizas, 132 N.J. 509, 525 (1993) (articulating four categories of interests requiring disqualification).

Respondent asserts that Mrs. Ryan had both a "direct personal interest" and "indirect pecuniary interest" by voting on the tax counsel appointment while her appeal was pending, as was determined by the ALJ. See Db4; Db9. Neither classification of potential conflicts of interest is applicable here based on the facts in the record and applicable case law.

A disqualifying "direct personal interest" exists where "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." Wyzykowski, 132 N.J. at 525. There were no facts in the record below, nor findings of fact made by the ALJ that indicate any close friend or relative of Mrs. Ryan who would have benefited in a non-financial way from Mrs. Ryan's vote for the township's tax attorney. See Pa92-95. Indeed, the thrust of Respondent's allegations against Mrs. Ryan concerned a purported financial benefit related to her property tax assessments. See Db10-11. Respondent does not, indeed cannot identify any non-financial benefit to a close friend or relative, a required element to sustain the finding of violation of a "direct personal interest." Wyzykowski, 132 N.J. at 525.

Likewise, there was no evidence in the record below to support a conflict of interest based on an "indirect pecuniary interest," which occurs

"when an official votes on a matter that financially benefits one closely tied to the official, such as an employer, or family member." Wyzykowski, 132 N.J. at 525. In support of this finding of violation, the ALJ reasoned (and the Respondent adopted as its own position) that Mrs. Ryan "voted on the appointment of tax counsel to the municipality who would appear in opposition to [Mrs. Ryan's pending] appeals; the latter knowing that [Mrs. Ryan] served on the council and voted on their appointments." See Pa94; Db4. This finding of fact was patently unsupported and contrary to facts in the record. It was documented in May 2017 that Matthew Giacobbe, Esq., the township's attorney, stated at a council meeting that "it is the general practice for an outside agency from another municipality to serve in the township's stead in the vent of a perceived conflict." See Pa49. And, as argued in Mrs. Ryan's opening brief, the appointed tax attorney would have an independent obligation as a licensed attorney to identify and resolve any potential conflicts of interest identified during his representation of the township. See Pb13. Thus, any perceived "conflict of interest" would be attributed to the appointed tax attorney and resolved by the township appointing outside counsel as explained by Mr. Giacobbe. See Pa49.

Respondent further asserts that the circumstances of Mrs. Ryan's pending tax appeal "could give rise to questions as to whether [Mrs.] Ryan

could properly oversee a firm that would be opposing her in a proceeding where she had such a significant interest[.]" Db9. But there was no evidence presented, nor finding of fact made that Mrs. Ryan would be "overseeing" the appointed tax attorney. It was not alleged that Mrs. Ryan was associated in any capacity with the appointed law firm, nor that her role as councilwoman required her involvement with the appointed tax attorney at any point in the future.

At bottom, and again, Respondent has failed to present any argument based on law or fact to support the violation of subsection (d). Accordingly, Mrs. Ryan submits that the Board's finding of violation must be set aside.

CONCLUSION

For the reasons above and those set forth in Appellant's principal brief, the Local Finance Board's findings of violations of N.J.S.A. 40A:9-22.5(c) and (d) must be reversed. The Board's decision lacks evidentiary support, misapplies controlling law, and was plainly arbitrary and unreasonable.

Respectfully submitted,

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/s/ *Brandon D. Minde*
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Dated: May 12, 2025