

**NEW YORK STATE BAR ASSOCIATION  
STATE AND LOCAL GOVERNMENT LAW SECTION**

**Spring Forum – April 27, 2018**

**ANNUAL FINANCIAL DISCLOSURE  
FOR LOCAL MUNICIPALITIES**

**Presented by: Steven G. Leventhal, Esq.**

**I. Introduction**

Local financial disclosure laws were enacted in response to the adoption by New York State of the Ethics in Government Act of 1987 (the “State Act”). The State Act imposed annual financial reporting requirements on municipalities having populations of 50,000 or more, and established a Temporary State Commission on Local Government Ethics (the “Commission”) to interpret and administer the annual financial reporting requirements. The State Act specified the form and content of the annual financial disclosure that municipalities would be required to use if they did not adopt their own consistent financial disclosure laws by January 1, 1991.

The State Act gave local municipalities the option of adopting their own financial disclosure laws to be administered locally, rather than submitting to regulation under the State Act. However, it did not specify what different form of annual disclosure by local municipalities, if any, would meet the requirements of the State Act.

In a 1991 article, the former Executive Director of the Commission, Mark Davies, criticized the form of financial disclosure set forth in the State Act: “The financial disclosure form set out in the [State Act] is in many instances virtually unintelligible and is far too invasive

of the rights of officials in most municipalities. In some municipalities that form may indeed chill the willingness of good people to serve in local government.” Davies wrote that the Commission was “ever mindful of the chilling effect that overly stringent ethics regulations may have on officials’ willingness to serve, [and therefore] worked closely with its [local government] advisory board to ensure that [the] recommendations, if enacted, [would] not only promote integrity in local government but also increase citizen participation in that government.”

The Commission reviewed the annual financial disclosure form adopted by Chautauqua County, and concluded that it would meet the minimum requirements of [the State Act] if the form were amended in certain respects.

A local annual disclosure form should be written in plain English. This fact alone increases the likelihood that the goals of financial disclosure will be achieved. County officials are more likely to recognize potential conflicts when they are revealed by a form that can be understood. Similarly, public confidence in government is more likely to be fostered by disclosure statements that can be understood.

In a simplified format, the revised annual disclosure form elicits substantially the same information about the outside interests of county employees, their spouses and dependent children as is required to be disclosed by the current form (i.e., business positions, outside employment, future and past employment, investments, trusts, other income, gifts, reimbursements, debts, interest in contracts, and political party positions). The revised form does not require municipal officers and employees to disclose assignments of income, or below market transfers of assets to non-relatives. Unlike the acquisition of an outside interest, which has the potential of creating a conflict of interest, the divestiture of income or assets is not likely to create a conflict. Thus, this information is irrelevant to the legitimate purposes of financial disclosure.

Because its inquiries are limited to information that is reasonably connected with the legitimate goals of financial disclosure, the revised annual disclosure form is less likely to discourage citizen participation in government.

The State Act required various categories of municipal employees to file annual disclosure statements, including officers and employees holding “policy-making” positions. The Commission adopted guidelines for determining which officials in a municipality hold policy-making positions. The Commission guidelines were the basis for an expanded definition of policy-making set forth in the proposed legislation.

## **II. What Municipalities are Required to Comply?**

Municipalities with populations of 50,000 or more

## **III. Purposes**

- a. Annual Reminder of Ethical Obligations
- b. Check on Transactional Disclosure
- c. How Much Disclosure is Reasonable?

## **IV. History**

- a. Onerous form incorporated in State Law
- b. Chilling Effect on Public Service
- c. Adoption of Simpler Form

## V. Who is Required to File?

- a. Elected Officials
- c. Job Titles Listed in Local Financial Disclosure Law
- d. Policy Makers -- Policy Maker Guidelines (see Appendix)
  - Department Heads, Deputies and Assistants, others
- f. Candidates for Municipality-Wide Elective Office
- e. Local Party Officials – What is a local party official?
  - Election Law section 1-104 (Definitions) provides, in part, that:

... 3. The term "party" means any political organization which at the last preceding election for governor polled at least fifty thousand votes for its candidate for governor.

4. The term "party position" means membership on a party committee or the position of delegate or alternate to a party convention.

5. The term "party officer" means one who holds any party position or any party office whether by election, appointment or otherwise.

6. The term "committee" means any committee chosen, in accordance with the provisions of this chapter, to represent the members of a party in any political unit.

... 12. The term "independent body" means any organization or group of voters which nominates a

candidate or candidates for office to be voted for at an election, and which is not a party as herein provided.

## **Vi. Exemptions from Filing**

- a. How is list Compiled?
- b. Lawsuit by Nassau County ADA's
- c. PERB Decisions

## **VII. FOIL Requests:**

Deletions from Disclosure

- Notification to filer
- Opinions of NYS Committee on Open Government
- Categories of Amount – automatic
- Other Privacy Concerns eg. home addresses, children

## **VIII. Deadline for Filing**

- a. May 15
  - Use of Municipal Home Rule Law
- b. IRS extension automatically extends deadline
- c. Board of Ethics may grant extensions

## **IX. Protocol for Review of Disclosure Forms**

- Duty to review

- Has everyone who is required to file done so?
- Have all questions been answered?
- Compare investments and secondary employers to vendor list
- Review for further inquiry

## **X. Penalties**

Civil Penalty up to \$10,000

- Knowing and willful failure to file
- False information with intention to deceive
- No penalty for unintentional understatement of category of amount
- Referral to D.A. for prosecution as a class A misdemeanor

## **XI. Appendix**

- a. Temp. State Comm. on Local Gov. Ethics – approved form
- b. Simplified Form Incorporating Client Disclosures
- c. Instructions for Completing Disclosure Form
- d. Policy Maker Guidelines