

New Jersey Supreme Court Issues Important Ruling on Potential Conflict of Interest

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The Supreme Court of New Jersey ruled in the case of Piscitelli v. City of Garfield Zoning Board of Adjustment on an important case involving potential conflicts of interests of public officials. Pashman Stein Walder Hayden partner CJ Griffin, counsel Suzanne Bradley, and associates Robyn Lym and Yelena Yukhvid submitted an amicus curiae brief on behalf of Libertarians for Transparent Government, a non-profit organization, in the case. It successfully argued that the zoning board's conflict of interest issues needed to be resolved before the decision in questions could be finalized.

Planning and zoning board members are barred from hearing cases when a personal interest might reasonably be expected to impair their objectivity or independence of judgment under New Jersey law. At issue was the application for development of property filed by members of the Conte family. The board voted in favor of it, against the objections of Vincent and Rose Mary Piscitelli.

At the time Dr. Kenneth Conte was a member and president of the Garfield Board of Education, which approves school employee appointments, contracts, and salaries. Five board members were employed or had immediate family members working for the board of education. To avoid the appearance of a conflict the lots owned by trusts bearing the names of Dr. Conte and his brother (also a physician) were transferred to a trust benefitting Dr. Conte's nieces and nephew. He was present at the hearing and voiced support for the project.

The Piscitellis objected to the development and claimed board members who were employed or had immediate family members employed by the Board of Education, or were patients of the Conte brothers or their immediate family members were patients, should disqualify themselves from the proceedings. No board members

recused themselves and the project was approved.

“Every citizen should receive basic fairness from public officials. No one should fear the deck is stacked against them when their interests are being impacted by local government. Conflict of interest laws, when they’re obeyed, should result in a fair process that deserves public confidence. Failing to do so can give citizens the impression local government plays favorites and may be corrupt,” said Griffin.

The Piscitellis appealed. The trial court and the Appellate Division found in favor of the board. They appealed again and the state Supreme Court reversed in a March 27 decision, sending the case back down to the trial court with instructions that facts be found concerning the board members and their family members. The trial court needs to heed the Piscitellis’ concerns and determine if,

- There are doctor-patient relationships that should have resulted in affected board members recusing themselves from deciding the application, and,
- Dr. Conte, as president or a member of the Board of Education, had the authority to vote on significant matters relating to the employment of board members or their immediate family members.

If the answer to either is yes, the affected board members had a conflict of interest and the Supreme Court instructed the lower court to vacate the board’s decision. The court stated a citizen’s right to a fair and impartial tribunal requires a public official to disqualify himself or herself whenever the official has a conflicting interest that may interfere with the impartial performance of his or her duties as a member of the public body.

The issue isn’t whether the official acted dishonestly or out of personal or financial interest. The key factor is whether there was a potential for conflict which can arise when a public official faces potential desires that may push him or her in opposite directions.

“The four of us put a lot of work into the brief and we’re very happy the Piscitellis and Libertarians for Transparent Government got the decision they sought. It’s a reminder to all those involved in New Jersey government that they need to not only avoid actual conflicts of interest but also take action to avoid decisions that may appear to be a conflict of interest. The public doesn’t deserve anything less,” said Griffin.