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# Local Finance Notice

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## Fees for Marriage and Civil Union Ceremonies

The Local Finance Board [Board], in accordance with its responsibilities under the Local Government Ethics Law [Ethics Law], recently considered a case involving the collection of fees by mayors for the performance of marriage ceremonies. As a part of its decision, the Board directed the Division of Local Government Services [Division] to prepare and provide guidance to mayors and the municipalities in which they serve relating to the collection of fees for the performance of marriage ceremonies and [civil union](#)<sup>1</sup> ceremonies.

**Effective March 15, 2007**, any fee collected by a mayor or designee [mayor], as authorized by statute, for the performance of a marriage or civil union ceremony must be authorized by ordinance and deposited into the municipal current fund.

It should be noted that an ordinance is not necessary for a mayor to suggest that parties may make a direct, voluntary contribution to a charitable organization of the parties' choice.

## Background

Pursuant to N.J.S.A. 37:1-13, "any mayor or deputy mayor when authorized by the mayor... [is]... authorized to solemnize marriage or civil union between such persons as may lawfully enter into the matrimonial relation or civil union ...." In the exercise of the statutory authority provided under N.J.S.A. 37:1-13, mayors have followed a variety of practices in performing marriage ceremonies. Surveys conducted by the New Jersey League of Municipalities and the New Jersey Conference of Mayors have indicated the types of marriage ceremonies at which mayors have officiated and the various practices followed by mayors with regard to the types and amounts of fees collected in the performance of such ceremonies.

<sup>1</sup> On December 21, 2006, Attorney General Stuart Rabner issued opinion 1-2007 regarding the obligations of public officials, including mayors, with regard to the solemnization of marriages and civil unions in light of P.L. 2006, c. 103. The Opinion provides that "although public officials can decline to exercise their authority to solemnize marriages and civil unions entirely, if a public official elects to be available generally for the purpose of solemnizing marriages, that official must also be available generally to solemnize civil unions. Any attempt to distinguish between marriages and civil unions in the exercise of statutory authority to solemnize would violate the Law Against Discrimination, N.J.S.A. 10-5-1, et seq. ("LAD")." Mayors seeking legal guidance relating to the solemnizing of civil unions should seek such guidance from their municipal attorneys.

While there is no case on point regarding the collection of marriage and civil union ceremony fees by mayors, the practice of municipal court judges with regard to the performance of such ceremonies has been the subject of an opinion of the New Jersey Supreme Court [Supreme Court]. In the Matter of James Del Mauro, 57 N.J. 317 (1971), the Supreme Court determined that the chief judge of a municipal court acted improperly and in violation of the Canons of Judicial and Professional Ethics when he sought and accepted fees for the performance of marriage ceremonies.

In reaching this conclusion, the Supreme Court noted that judges are compensated by annual salaries that are established pursuant to N.J.S.A. 2A:8-9. The Supreme Court also noted the annual salaries provided under this statute were intended to provide compensation to municipal court judges for the performance of the duties and responsibilities of their offices, including the performance of marriage ceremonies. In fact, the Supreme Court noted that such judges were specifically precluded by statute from receiving such fees. In the Matter of James Del Mauro, 57 N.J. 317 (1971) supra. The Supreme Court concluded that the collection of fees by a judge of a municipal court for the performance of marriage ceremonies constituted a violation of the Canons of Judicial and Professional Ethics.

In considering the issue of whether it is appropriate for mayors to collect fees in connection with the performance of marriages or civil unions, it should be noted that the authority of both mayors and judges of municipal courts to officiate at marriages and civil unions is set forth in the same statutory provision, N.J.S.A. 37:1-13, which does not provide for the collection of fees for the performance of such ceremonies. It is further recognized that, under the Ethics Law, local officials, including mayors, are barred from using or attempting to use their official positions to secure unwarranted privileges or advantages for themselves or others. N.J.S.A. 40A:9-22.5(c). There are no statutes that specifically provide for the collection of fees for the performance of such ceremonies. However, in contrast to the statutes that apply to judges, there is no statute that specifically precludes a mayor from collecting a fee.

It is also appropriate to note that performing a wedding or a civil union is not an obligation of the position of the mayor but rather is a discretionary authority that has been vested in mayors by the Legislature.

### **Guidelines for Collection of Fees**

After reviewing the applicable statutes, the Division recognizes that there is ambiguity in the applicable statutes. The Division also takes note of the wide range of the salaries paid to mayors, with some mayors receiving a nominal amount for part time service and others receiving a salary for full time employment. The Division is announcing the following guidelines for the collection of fees for the performance of marriage and civil union ceremonies effective March 15, 2007. (The March 15, 2007 effective date is necessary so that municipalities can adopt appropriate ordinances in accordance with this Local Finance Notice.)

#### **1. Municipalities Must Adopt A Fee Ordinance In Accordance With N.J.S.A. 40:48-1**

The mayor may collect fees for performing marriage and civil union ceremonies provided that the municipality adopts an ordinance fixing the fees in accordance with N.J.S.A. 40:48-1. The fees must be deposited into the current fund, payable to the municipality. These fees may remain in the current fund as MRNA (Miscellaneous Revenue – Not Anticipated) for the first year and may be anticipated as revenue in municipal budgets in subsequent years. Alternatively, disbursements from the appropriate budgetary line item may be made to the mayor for services or reimbursement of out-of-pocket expense only after an appropriate ordinance is adopted, as explained in section 2 below.

## 2. All Disbursements To The Mayor Must Be Pursuant To Ordinance

The municipality may adopt an ordinance that provides for the establishment of a fixed fee for the service performed by the mayor or reimbursement of out-of-pocket expenses in accordance with section 4 below. The fee must be payable to the municipality, deposited into the current fund and then disbursed to the mayor through the appropriate budget line item.

## 3. Disbursement To The Mayor As Additional Fixed Salary

The municipality may adopt an ordinance that provides for additional salary payment to the mayor that would be part of the municipality's salary ordinance. The salary ordinance may be in addition to the fee ordinance and/or a reimbursement ordinance referenced within.

## 4. Reimbursement Of Out-Of-Pocket Expenses

The municipality may adopt an ordinance for reimbursement to the mayor for out-of-pocket expenses. In such cases, the authorization for the provision of reimbursement would be established by ordinance with fees to be charged in accordance with an established schedule, *i.e.*, for mileage, and for direct cost reimbursement for other expenses documented by receipts. Fees must be made payable to the municipality, collected by the mayor, deposited in the municipal current fund, and the reimbursement provided by voucher with appropriate documentation, authorization, and expenditure from the appropriate budget line item.

## 5. Contributions To Charity

An ordinance is not required for a mayor to suggest to a party that a voluntary contribution directly to a charitable organization may be made. However, the mayor cannot require a contribution or specify a specific charity.

## 6. Municipal Accounting of Ceremony Fees Collected

In all cases, fees collected for the performance of marriage and civil union ceremonies must be deposited in the current fund as MRNA, unless and until experience would justify anticipation of a separate revenue line item in the municipal budget. Additionally, in disbursing funds to a mayor, in the form of a salary or other form of compensation, municipalities would, of course, be required to comply with applicable tax withholding requirements.

If you have any questions, please contact the Division at (609) 292-6613 or by [e-mail](mailto:dlgs@dca.state.nj.us) to [dlgs@dca.state.nj.us](mailto:dlgs@dca.state.nj.us).

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Approved: Susan Jacobucci, Director

### Table of Web Links

Page	Shortcut text	Internet Address
1	Civil union	<a href="http://www.njleg.state.nj.us/2006/Bills/PL06/103_.PDF">www.njleg.state.nj.us/2006/Bills/PL06/103_.PDF</a>
3	e-mail	<a href="mailto:dlgs@dca.state.nj.us">dlgs@dca.state.nj.us</a>