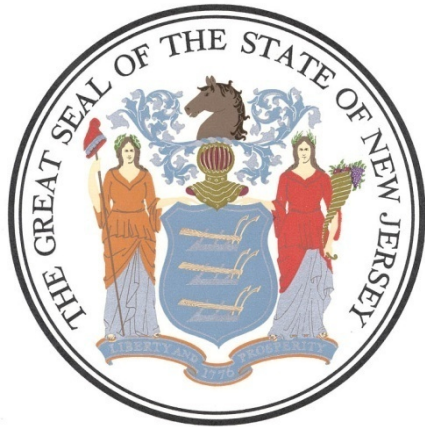


State of New Jersey

Office of the State Comptroller

A. Matthew Boxer, Comptroller



An Analysis of

**LEGAL FEES PAID BY
NEW JERSEY LOCAL
GOVERNMENTS**

June 25, 2013

V. Analysis of Legal Billing Practices at Selected Local Governments

As part of our analysis, we reviewed the legal billings of several law firms that provided legal services to the five selected LGUs. In many instances, these firms and the public agencies receiving their services utilized the best practices set forth in this report. In the sections that follow, we highlight some of the deficiencies that we identified during our review.

A. Township of North Bergen

The Township of North Bergen (“North Bergen” or the “Township”) is located in Hudson County. North Bergen’s population in 2010 was 60,773 and its 2010 budget was \$85,402,107. In Fiscal Year (“FY”) 2011, the North Bergen legal department consisted of ten attorneys including a Township Attorney. North Bergen also contracted with twelve law firms for additional legal services. In FY 2011 North Bergen paid \$420,885 in salaries to the attorneys in its legal department and paid an additional \$863,458 in legal fees to outside counsel, for a total of \$1,284,343 spent on legal services for the year.

For our review, we examined North Bergen’s FY 2011 legal services expenditures and specifically the billing invoices submitted by the law firm of Chasan Leyner & Lamparello, which was North Bergen’s highest billing outside legal counsel. Our analysis identified numerous deficiencies as described in detail below.

North Bergen has never conducted a comparative review concerning its Township Attorney's salary to determine if the current arrangement is cost efficient.

North Bergen's Township Attorney handles the Township's day-to-day legal issues, such as reviewing procurement documents, responding to records requests, meeting with other Township officials and serving as the liaison with the Township's outside attorneys. He also provides legal services such as drafting ordinances and resolutions, addressing personnel matters and attending meetings of the Township's governing body. Litigation and certain other legal services are delegated by the Township Attorney to one of North Bergen's outside counsel.

In FY 2011, North Bergen paid its Township Attorney a salary of \$207,870 plus an additional \$16,469 for unused vacation time. North Bergen informed us that it has never conducted a comparison of the Township Attorney's salary to that of other full-time municipal attorneys in New Jersey, or considered other compensation arrangements such as using a pre-set retainer with outside counsel. According to information reported to the New Jersey State League of Municipalities in 2011, North Bergen's Township Attorney was the highest paid municipal attorney in the State. In fact, North Bergen provides a substantially larger salary to its Township Attorney than any of the four largest New Jersey municipalities pay their highest ranking in-house counsel. The Township Attorney's salary also was significantly larger than that of the State Attorney General (\$141,000), the State's chief law enforcement officer who supervises a department comprised of more than 600 attorneys and 8,000 total employees. The following chart illustrates this comparison:

Entity	2010 Population	Title of Highest Ranking Counsel	FY2011 Salary
Newark	277,140	Corporation Counsel	\$154,057
Jersey City	247,597	Corporation Counsel	\$124,032
Paterson	146,199	Corporation Counsel	\$92,721
Elizabeth	124,969	Director, Law Department	\$134,136
North Bergen	60,773	Township Attorney	\$207,870

North Bergen’s Township Attorney also has received annual raises in line with the raises provided to North Bergen’s union employees. This has been accomplished through annual changes to the Township Attorney’s employment agreement. We recommend that North Bergen conduct a review to determine whether the compensation being paid to its Township Attorney is appropriate.

North Bergen’s Township Attorney appears to have violated the Local Government Ethics Law by delegating legal work to a law firm with which he is affiliated.

The Township Attorney is also Of Counsel with Chasan Leyner & Lamparello, P.C. (“Chasan”), a law firm that separately contracts with North Bergen as outside counsel. As noted previously, in FY 2011 Chasan was North Bergen’s highest billing outside legal counsel, billing a total of \$371,407. The Township Attorney reported to us that he does not receive a salary or similar earnings from Chasan but is provided an office and other support services at the firm and is affiliated with the firm. Although he no longer practices law outside of his position with North Bergen, his name is on the law firm’s letterhead, his biography is on the firm’s website and he is

listed in the firm's directory. The law firm's managing partner informed us that in exchange for these benefits, the Township Attorney provides the firm with a presence in the municipal law field based in part on his position as North Bergen's Township Attorney.

According to the Township Administrator, the Township Attorney helped develop North Bergen's RFQ for outside counsel and participated in the evaluation of proposals, including the proposal submitted by Chasan. The Township Attorney denied having any such involvement in the evaluations. In any event, the Township Attorney reported to us that when a new legal matter or legal issue arises in North Bergen, he unilaterally decides whether he will handle the matter himself or if it should be delegated to one of North Bergen's outside counsel. The Township Attorney chooses which particular outside counsel to delegate each matter to based on the area of law at issue and the Township's prior experience with each outside counsel. As part of this process, he routinely delegates the Township's legal matters to Chasan (but is not responsible for reviewing and approving the resulting billings on behalf of the Township).

Under the Local Government Ethics Law, "No local government officer or employee shall act in his official capacity in any matter where he . . . or a business organization in which he has an interest, has a direct . . . or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment." *N.J.S.A.* 40A:9-22.5. The Township Attorney is an employee of North Bergen. Furthermore, he acts "in his official capacity" when he assigns North Bergen's legal matters and if he participates in the Township's evaluation of vendor proposals. As a result of his dual positions as North Bergen's Township Attorney and Of Counsel with the Chasan firm, his actions described above appear to be a violation of the Local Government Ethics Law. The Township Attorney informed us that when he entered into the Of Counsel arrangement with Chasan, he sought and received approval from the attorney ethics

board concerning the arrangement. However, the ethics standards that apply to local government employees are different than those that apply to all New Jersey attorneys. We therefore have referred this matter to the Local Finance Board, which adjudicates local government ethics issues, for review and any appropriate action.

North Bergen did not follow the evaluation procedures set forth in its legal services RFQ.

The Township's RFQ for outside legal counsel listed six specific evaluative criteria on the basis of which responsive proposals would be scored including, for example, the firm's reputation in the field and samples of their recent work product. In contrast to these stated criteria, however, the Township Administrator informed us that actually "80 percent of the evaluation came from prior experience [with the outside counsel] and proximity of the firm to North Bergen." North Bergen did not utilize the pre-set evaluative criteria set forth in the RFQ when it conducted its evaluation. Moreover, despite the fact that the RFQ listed these specific criteria, the Township Administrator told us that the Township did not actually score the proposals or take any steps to document any evaluation that it undertook.

The Township's RFQ also stated that responsive proposals would be evaluated by the Township's governing body, the Board of Commissioners. Nevertheless, we were advised by the Township Administrator that the evaluation of proposals actually was conducted by the Township Administrator and the Township's CFO, with input from the Township Attorney. Conversely, the Township Attorney asserted that he did not participate in the evaluation of the proposals. While Township officials did not agree on which particular Township employees conducted the evaluation, it is clear that North Bergen did not comply with the evaluation process set forth in its own RFQ. While it is not our intention to suggest any negative opinion on

the qualifications of the firms ultimately selected, in the interest of transparency and fairness to interested vendors LGUs should follow the evaluation procedures set forth in their solicitation documents.

Neither the RFQ nor any internal policies specified North Bergen's process for allocating legal work among its pool of outside counsel.

North Bergen awards contracts to multiple attorneys and law firms in various designated areas of law, thereby creating a pool of attorneys for each subject matter. The RFQ did not specify how North Bergen intended to delegate legal work among the pool of attorneys and simply stated that “all legal work will be allocated on an as needed basis.” According to the Township, the delegation of legal work is based on the Township’s prior experience with the various outside counsel. An RFQ should describe the process for the allocation of legal work among pooled attorneys and law firms in order to maximize transparency and avoid the appearance of improper favoritism.

North Bergen permitted a law firm to bill \$60,000 for legal services it was not authorized to provide.

The Chasan law firm was awarded a contract to perform services in eight different legal areas, ranging from general litigation to labor law. Our review found that the law firm also billed the Township approximately \$60,000 in the area of landlord/tenant law, despite the fact that it had not been awarded a contract to perform such services. Neither North Bergen nor Chasan’s managing partner were able to explain how this error occurred. Several other of North Bergen’s outside counsel were awarded contracts to perform landlord/tenant legal services, but they were not actually allocated any work in this area. The Township Attorney’s unauthorized

delegation of this work to a law firm that he is affiliated with highlights the previously cited concerns related to the Local Government Ethics Law. To avoid violations of the LPCL and the State's pay-to-play laws, LGUs should permit outside counsel to perform work only in areas in which they have been awarded contracts or otherwise authorized to perform services.

North Bergen does not enter into formal written contracts with its outside counsel.

North Bergen did not enter into formal written contracts with its outside counsel and instead used its RFQ and award resolution as the contract. However, the only contractual terms set forth in those documents were the hourly billing rate and the general areas of law encompassed by the arrangement. By failing to specify pertinent contractual terms such as the scope of services, the expenses and disbursements that can be charged to the Township and the appropriate billing rate for paralegal staff, North Bergen subjected itself to a risk of incurring unexpected and unnecessary expenses. The Township Administrator initially stated to us that he did not feel that formal written contracts with outside counsel were necessary since the Township "trust[ed]" its outside counsel. The Township Attorney subsequently advised us, however, that the Township intends to enter into formal written contracts with its outside attorneys as part of its next legal services procurement.

North Bergen paid one of its outside counsel approximately \$25,000 for non-descriptive billings.

In FY 2011, a senior partner at the Chasan firm billed the Township up to \$25,000 based on billing entries that did not specifically describe the legal work being performed. This deficiency was compounded by the fact that many of these charges were contained in block-billed entries, making it impossible to quantify the exact amount that was improperly billed. The

vast majority of the entries in question were vaguely described as communications between the attorney and either the Township Attorney or the Mayor. Other entries reflected generic efforts such as “misc. attention to file re: litigated matters.” All of these non-descriptive entries were billed to the firm’s “general file,” so it is impossible to determine the specific legal matters to which these tasks pertained. The attorney advised us that he is intentionally non-descriptive with billing entries for certain matters to protect the municipal administration from public records requests that might disclose litigation strategy or politically damaging information. This practice, however, hinders transparency, heightens the risk of improper payments and is inconsistent with the public source of the payments at issue.

North Bergen officials could not explain the job duties of several of the Township’s in-house attorneys, including one attorney that allegedly received a salary and benefits without North Bergen’s knowledge.

As previously noted, as of FY 2011 ten in-house attorneys worked in North Bergen’s legal department. When we initially asked the Township Attorney and the Township Administrator about the job responsibilities of several of the in-house attorneys, both were unsure of what services those attorneys actually provided. They also informed us that other than the Township Attorney, none of the in-house attorneys have written employment agreements or job descriptions that define their duties. Ultimately, after several inquiries by this office, the Township was able to provide at least some documentation concerning the responsibilities of all but one of those individuals.

When we initially asked the Township Attorney and the Township Administrator about the job duties of the remaining in-house attorney (the “In-House Attorney”), we were informed that he was paid a salary of \$18,807 in FY 2011. They stated that they were unsure if he was

North Bergen's Alcohol Beverage Control Board Attorney or its Tenant Advocate. Following our interviews and a follow-up document request, North Bergen advised us that they commenced an internal review to determine whether he was actually performing any job duties for North Bergen.

Immediately after North Bergen commenced its review and requested information from the In-House Attorney regarding his job duties, he submitted a letter resigning from his position. North Bergen subsequently asserted to us that he had received a salary for unknown job duties without the consent of any Township officials. As a result, North Bergen advised us that it would be referring the matter to the Hudson County Prosecutor's Office to determine whether any criminal violations had been committed by the In-House Attorney.

When we interviewed the In-House Attorney, he disputed North Bergen's claims that he was receiving a salary without the knowledge of North Bergen officials. According to the In-House Attorney, he was assigned the job of Housing Attorney sometime between 1988 and 1990 and was not provided a job description and did not report to anyone in the Township. He understood that his job responsibilities were to provide legal services to North Bergen residents with housing-related issues. The In-House Attorney stated that from his initial appointment until 2006, he was active in his role as Housing Attorney. However, he said that after a falling out with a Township construction code official, he stopped receiving that legal work and had to try to "create" his own work. He stated that despite his efforts, there were multiple instances in which the Township Attorney took Housing Attorney work away from him and delegated it to the Chasan firm at an hourly billing rate.

The In-House Attorney further stated that despite the lack of work being assigned to him, throughout his employment with the Township he was routinely solicited to make political

contributions to a local party committee, stating that his contributions in 2012 to this committee totaled \$6,600. A search of Election Law Enforcement Commission (“ELEC”) records show that he has contributed \$17,000 to this committee since 2009. The In-House Attorney specifically noted that three months before our interview of him, the Township Attorney himself had solicited a political contribution from him in the amount of \$1,000 on behalf of a political action committee that was opposing one of the Mayor’s political rivals. (Shortly after our inquiries concerning this matter, the political action committee returned this contribution to the In-House Attorney.)

In addition to his \$18,807 salary, North Bergen provided health benefits to the In-House Attorney in FY 2011 at a cost to taxpayers of \$26,206. Furthermore, he was enrolled in the state pension system as an employee of North Bergen from 1988 through 2011.

We have referred the matter of the In-House Attorney’s employment at North Bergen to the State’s Division of Criminal Justice to determine whether any criminal violations have been committed.

North Bergen provides health benefits to several in-house attorneys at a cost that is substantially more than those attorneys’ salaries.

In the course of reviewing amounts paid by North Bergen in connection with legal services, we noted that the Township provides health benefits to several of its part-time attorneys despite the fact that the annual premium paid by North Bergen for these benefits is substantially more than the salaries paid to the attorneys. The following chart sets forth the payments at issue in FY 2011:

Position	Annual Salary	Annual Cost of Health Benefits	North Bergen Contribution	Attorney Contribution
Housing Attorney	\$18,807	\$26,368.92	\$26,206.81	\$162.11
Public Defender	\$10,897	\$26,368.92	\$26,274.95	\$93.97
Public Defender	\$21,359	\$26,368.92	\$26,184.84	\$184.08
Public Defender	\$10,898	\$26,368.92	\$26,274.95	\$93.97

In addition, North Bergen has adopted an ordinance that entitles retired North Bergen employees and their dependents to lifetime health benefits at North Bergen’s expense. The ordinance permits these benefits to be provided to retired part-time employees.

The State’s Division of Local Government Services (“LGS”) requires all municipalities to complete a Best Practices Inventory Questionnaire that is considered when State aid to municipalities is determined. LGS’ stated goal underlying this questionnaire is to “improve financial accountability and transparency.” The FY 2013 questionnaire specifically asks municipalities whether they (a) exclude healthcare coverage for part-time elected and appointed officials and (b) limit health benefits to full-time employees. North Bergen’s policy of providing health benefits to part-time employees raises questions about whether this is an efficient use of public money, and could jeopardize a small percentage of North Bergen’s State aid. We recommend that North Bergen conduct a review to determine whether providing health benefits to part-time employees is cost efficient and in the interest of taxpayers.