

# John Paff

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FEBRUARY 10, 2005

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Joseph Valenti  
Division of Local Government Services  
PO Box 803  
Trenton, New Jersey 08625-0803

Dear Mr. Valenti:

Enclosed please find the following documents relating to Plainsboro Township's appointment of a "Special Tax Counsel":

- Resolution of the Township Committee
- Certification of Availability of Funds
- Proof of publication

I believe that the enclosed documents are deficient in two respects, and, if you agree with me, I request that you instruct Plainsboro to amend its procedures.

First, while the resolution states that "funds are available for this purpose" it does not "recite that [a certificate of funds availability] has been provided," nor does it "specify the exact line item appropriation(s) or ordinance which shall be charged." N.J.A.C. 5:30-5.4(a)(2). I assert that the cited rule requires this resolution to "recite" (i.e. specifically make reference to) the certificate, not just vaguely state that "funds are available."

Second, while the published notice states that the contract is for "\$200/hour," it does not inform the public that the total amount of the contract is "not to exceed \$10,000." N.J.S.A. 40A:11-5(a)(1)(i) requires the published notice to state "the nature, duration, service and **amount of the contract**, and that the resolution and contract are on file and available for public inspection . . ." (Emphasis supplied). I assert that the statute requires the publication to include the maximum amount of the contract, not just its hourly rate provision.

Thank you for your attention to this matter. I look forward to hearing from you.

Sincerely,

John T. Paff

Township of Plainsboro  
County of Middlesex

**RESOLUTION FOR PROFESSIONAL SERVICES -  
SPECIAL TAX COUNSEL**

**WHEREAS**, there exists a need in Plainsboro Township for the services of a Special Tax Counsel; and

**WHEREAS**, funds are available for this purpose, and N.J.S.A. 40A:11.1 et seq. requires that the resolution authorizing the award of contracts for professional services without competitive bids must be publicly advertised.

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee of the Township of Plainsboro, County of Middlesex, State of New Jersey hereby appoints the following to the position of Special Tax Counsel:

Richard M. Conley, L.L.C.  
Counselor at Law  
119 Mail Street, PO Box 662  
Flemington, NJ 08822-0662  
Rate of \$200.00/hour

**BE IT FURTHER RESOLVED** that the above agreements be approved and that the Mayor and Township Clerk be authorized to sign said contracts.

I certify the above to be a true copy of a Resolution adopted by the Township Committee of the Township of Plainsboro at a meeting held on October 13, 2004.

Patricia F. Hullfish, Township Clerk

**CERTIFICATION OF AVAILABILITY OF FUNDS**

10/13/04

Cert. #: 04-028

As required by N.J.S.A. 40A:4-57, N.J.A.C. 5:34-5.1 et seq. and any other applicable requirement, I, Wendy A. Wulstein, Chief Financial Officer of the Township of Plainsboro, New Jersey, have ascertained that there are available sufficient uncommitted appropriations in the 2004 Municipal Budget to award a contract to Richard M. Conley, LLC for Legal Services in an amount not to exceed \$ 10,000.00. Funds for certification are, therefore, being made available and certified against the appropriation for: Legal; Other Expenses; Legal - Other; Account #: 4-01-20-155-001-292.

Total Amount of Contract: Not to Exceed	<b>\$ 10,000.00</b>
Amount Certified: Not to Exceed	<b>\$ 10,000.00</b>

/s/ Wendy A. Wulstein  
Chief Financial Officer

Township of Plainsboro  
641 Plainsboro Road,  
Plainsboro, New Jersey 08536  
(609) 799-0909

State of New Jersey  
County of Middlesex

**Proof of Insertion**

I, Patricia F. Hullfish, do hereby, certify that an advertisement, of which the annexed is a true copy, was published in the Princeton Packet, a newspaper published and circulated in Plainsboro Township, County and State aforesaid, issue(s) as follow(s) to wit:

Date of Publication: 10/19/04

**NOTICE OF CONTRACT AWARDED**

The Township of Plainsboro has awarded a contract without competitive bidding as a professional service pursuant to N.J.S.A. 40A:11-5. This contract and the resolution authorizing it are available for public inspection in the office of the Municipal Clerk.

Awarded to: Richard M. Conley LLC  
Services: Special Tax Counsel  
Cost: \$200.00/hour  
Time Period: October 13, 2004 through completion  
of project . . .

by: Patricia F. Hullfish, Township Clerk

PP: 10-19-04 IT  
FEE: \$11.90

**State of New Jersey**  
**Department of Community Affairs**

Richard J. Codey, Acting Governor

Susan Bass Levin, Commissioner

March 8, 2005

Mr. John T. Paff  
PO Box 5424  
Somerset, NJ 08875-5424

Dear Mr. Paff:

This is in response to your letter of February 10, 2005, to Joseph Valenti of my staff regarding the Township of Plainsboro's appointment of a special tax counsel. You specifically enclosed the Township Committee's professional services resolution, the certification of availability of funds, and the proof of publication's notice of contract award. It is your belief the documents are deficient and the Township should amend its procedures in preparing them.

We have reviewed N.J.A.C. 5:30-5.4(a)2 regarding the procedure utilized for the certification of funds. While the rule states the resolution shall specify the exact line item appropriation(s) or ordinance which shall be charged, it has been the Division's on-going experience that local contracting units' chief financial officers will attach the certification of availability of funds to the resolution. Such phrases like "funds are available for this purpose" may not meet the letter of the rule. It is, however, the Division's position that an attached, properly completed certification to a resolution meets the intent and spirit of the rule. A review of the Township's certification indicated all required information regarding the availability of funds was provided, and made part of the resolution by attaching it.

We have also reviewed the proof of publication in view of the requirements of N.J.S.A. 40A:11-5(1)(a)(i). The statutory provision requires an amount of the contract be included in the official newspaper advertisement. The Township's Notice of Award has an hourly rate provision, "\$200.00/hour." In this particular situation, the "total amount of contract not to exceed \$10,000.00" should have been referenced in the publication notice and not the hourly rate provision.

The Division will be contacting the appropriate township officials regarding our review, and we thank you for bringing this matter to our attention.

I would also appreciate if you have any future need(s) to request the assistance of the Division of Local Government Services, please do not directly correspond with individual members of the staff, but address all correspondence to me in my capacity as the Director of the Division.

Sincerely,  
/s/ Susan Jacobucci, Director  
Division of Local Government Services

SJ:JAV:jp