

Ord. #50-2008

**AN ORDINANCE OF THE TOWNSHIP OF MOUNT OLIVE
TO AMEND AND SUPPLEMENT CHAPTER 196
ENTITLED “SEWERS AND WATER”, ARTICLE XI,
ENTITLED “FEES”, SECTION 196-67 ENTITLED
“EXEMPTIONS FOR ENTITIES SUPPORTED BY THE
PUBLIC OR GOVERNMENT”, OF THE CODE OF THE
TOWNSHIP OF MOUNT OLIVE**

WHEREAS, in 1990 the Township Council of the Township of Mount Olive adopted an ordinance, which has been codified as Chapter 196, Sewers and Water, Article XI entitled “fees”, Section 196-67 entitled “Exemptions for entities supported by the public or government”, which provides as follows:

“Entities supported by public funds and governmental entities as defined in Section 4-1 of this Code shall be exempt from payment of all fees and charges required by this Chapter”; and

WHEREAS, beginning in 1993 the Township developed the Budd Lake Sanitary Sewer System (BLSSS) and the Township, at the time that it assumed operation and maintenance of the system, adopted Sections 196-69 through 196-71 of the Township Code, the purpose of which sections of the Township’s codified ordinances was to require that the BLSSS and all utilities i.e., water and sewer operated by the Township, be operated on a self liquidating basis i.e., that the individual utility systems shall be operated independent of any other utility system within the Township and each utility’s rates and fees shall be adjusted so that all costs for the operation of same will be paid by the users of the system; and

WHEREAS; the utility systems are also operated separate and apart and independent of the Township’s authority to assess real estate taxes, since only a minority of the properties within the Township receive service from or are connected to the utility system; and

WHEREAS, at the time that the BLSSS went into operation in 1993, the Township billed the Board of Education of the Township of Mount Olive for sewer service fees for two schools located within the BLSSS i.e., the Chester M. Stephens Elementary School and the Mount Olive High School; and

WHEREAS, during a period of almost eight years, the Board of Education paid the Township its sewer service fees as billed and as determined pursuant to the Township Code and the Board of Education has always paid its water utility bills; and

WHEREAS, in 1999 the Township billed the Board of Education for connection fees for the two schools, which connection fees were paid; and

WHEREAS, toward the end of 2007, the Board of Education, when advised of an increase in sewer fees due to the enlargement of the student body at the High School, wrote to the Township and advised that it no longer wished to pay fees and claimed that it was exempt from doing so pursuant to the provisions of Section 196-67 of the Code; and

WHEREAS, at the time that the request was made, the Township Attorney reviewed the Code and it was the Township Attorney's position, as outlined in a letter to the Board of Education's Secretary, that Section 196-67 exempting certain public entities from the payment of certain fees should not be construed to exempt the Board of Education from paying sewer service fees within the BLSSS, as the Board of Education was not an entity included within the definition of governmental entities utilized in Section 196-67 and any construction of Section 196-67 which would exempt the Board of Education from paying its fair share of sewer fees would be in violation of the fundamental principal by which the BLSSS is operated and maintained i.e., that the system is self liquidating, with **all** users of the system paying their fair

share of the costs, which is also true as to the water utility for which the Board of Education has recently claimed an exemption as well; and

WHEREAS, the Business Administrator communicated the Township's position to the Board of Education, but the attorneys for the Board of Education have continued to assert that it should be exempt, notwithstanding that the Board of Education for the last eight years has paid sewer service fees as billed by the Township for the BLSSS; and

WHEREAS, the attorneys for the Board of Education have demanded a return of all service fees previously paid; and

WHEREAS, the Township Council believes that the Board of Education's interpretation of Section 196-67 is improper, since all the schools in the Township of Mount Olive are billed for sewer service fees by the respective utility that services those schools i.e., the BLSSS or the Cloverhill system; and

WHEREAS, where the Board of Education is connected to private utilities, it pays for the services rendered; and

WHEREAS, the Township wishes to make it abundantly clear, as it believes it always has been, that no one is exempt from paying sewer service fees or water fees for services rendered.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Mount Olive, County of Morris, and State of New Jersey:

SECTION 1. Article XI entitled "fees", Section 196-67 entitled "Exemptions for entities supported by the public or government", is hereby amended and clarified to provide as follows:

"Entities primarily supported by public funds and governmental entities as defined in Section 4-1 of this Code shall be exempt from payment of all application fees that may become due to the Planning Board, Board of Adjustment or Commission, however, all entities, including governmental entities, that utilize utilities operated by the Township of Mount Olive shall be required to pay

service fees i.e., water and sewer and connection fees, on the same basis as other entities since utilities operated by the Township are operated on a self liquidating basis”

SECTION 2. This ordinance is considered to be a restatement and clarification and is therefore deemed to be effective retroactively, as well as prospectively for the imposition of sanitary sewer fees, water utility fees, connection fees and all such charges for all utilities upon governmental entities, the same as any other customer in the system.

SECTION 3. This Ordinance shall take affect in accordance with law.

TOWNSHIP OF MOUNT OLIVE

RAYMOND T. PERKINS
Mount Olive Township Council President

ATTEST:

LISA M. LASHWAY
Mount Olive Township Municipal Clerk