

Ethics & Conflicts of Interest

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New Jersey State League of Municipalities

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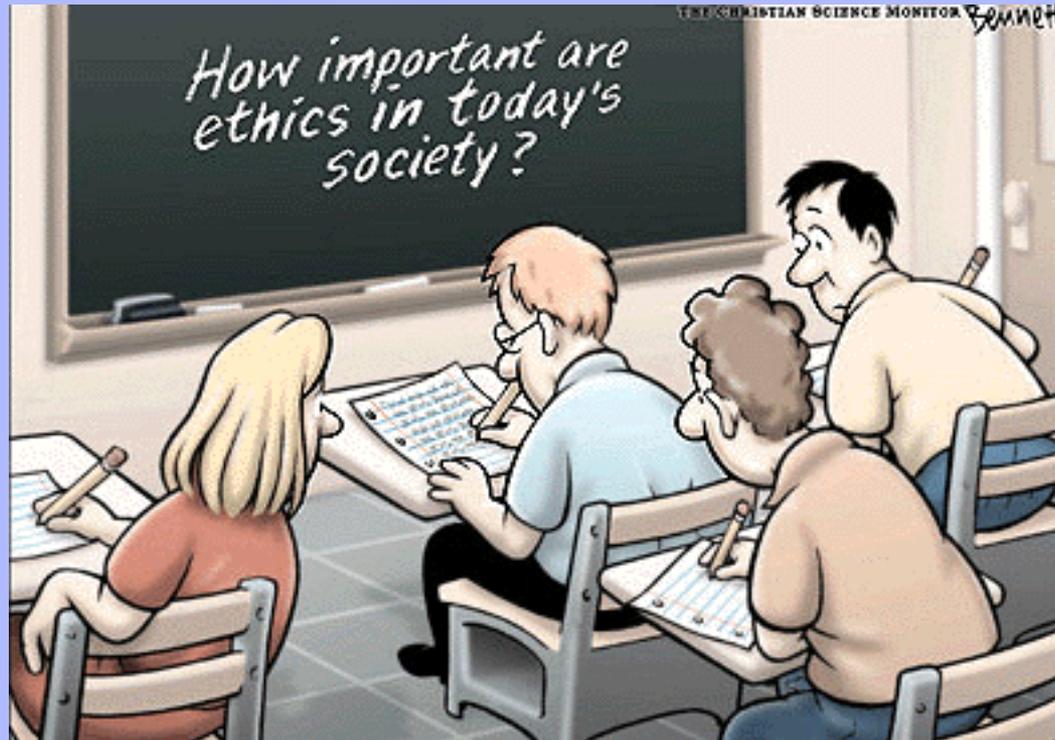
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Good Morning



Ethics and Conflicts of Interest



Ethics and Conflicts of Interest

Henry Clay

Speech at Ashland, KY (1859)

Government is a trust, and the officers of the government are trustees; and both the trust and the trustees are created for the benefit of the people.

Ethics and Conflicts of Interest

Ethical Conduct

- Ethical conduct is more than merely meeting the standards required by law.
- Ethical conduct means doing the *right* thing simply because it is the right thing to do.
- Violating legal standards for conduct means that legal sanctions can be imposed.

Ethics and Conflicts of Interest



We're all **SHOCKED, SHOCKED** to learn that there has been political influence in the award of contracts.

Ethics and Conflicts of Interest

Local Government Ethics Law

- Establishes minimum standards of conduct.
- Requires financial disclosure statements of certain officials.
- Enforced by the Local Finance Board.
- Local Ethics Boards allowed.
- Sanctions include fines.

Ethics and Conflicts of Interest

Standards of Conduct

- No local government officer or employee or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;

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Standards of Conduct Authority Members

- No independent local authority shall, for one year after the termination of office of a member of that authority:
 - (1) award any contract which is not publicly bid to a former member;
 - (2) allow a former member to represent, appear for or negotiate on behalf of any other party before that authority;
 - (3) employ for compensation, except pursuant to open competitive examination (civil service) any former member of that authority.
- The restrictions also apply to any business organization in which the former authority member holds an interest.

Ethics and Conflicts of Interest

Standards of Conduct

- No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others

Ethics and Conflicts of Interest

Standards of Conduct

- No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal *involvement* that might reasonably be expected to impair his objectivity or independence of judgment

Ethics and Conflicts of Interest

Standards of Conduct

- No local government officer or employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties

Ethics and Conflicts of Interest

Standards of Conduct

- No local government officer or employee, member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that it was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties.
- This provision shall not apply to ... an announced candidate for elective public office, if the local government officer has no reason to believe that the contribution ... was given with the intent to influence the local government officer in the discharge of his official duties

Ethics and Conflicts of Interest

Standards of Conduct

Insider Trading - Local Government Version

- No local government officer or employee shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated

Ethics and Conflicts of Interest

Standards of Conduct

- No local government officer or employee or business organization in which he has an interest shall represent any person or party other than the local government in connection with any cause, proceeding, application or other matter pending before any agency in the local government in which he serves. This provision shall not be deemed to prohibit one local government employee from representing another local government employee where the local government agency is the employer and the representation is within the context of official labor union or similar representational responsibilities

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Standards of Conduct

- No local government officer shall be deemed in conflict with these provisions if, by reason of his participation in the enactment of any ordinance, resolution or other matter required to be voted upon or which is subject to executive approval or veto, no material or monetary gain accrues to him as a member of any business, profession, occupation or group, to any greater extent than any gain could reasonably be expected to accrue to any other member of such business, profession, occupation or group

Ethics and Conflicts of Interest

Standards of Conduct

- No elected local government officer shall be prohibited from making an inquiry for information on behalf of a constituent
- Provided that no fee, reward or **other thing of value** is promised to, given to or accepted by the officer or a member of his immediate family, whether directly or indirectly

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Standards of Conduct

- Nothing shall prohibit any local government officer or employee, or members of his immediate family, from representing himself, or themselves, in negotiations or proceedings concerning his, or their, own interests

Ethics and Conflicts of Interest

Financial Disclosure

- Local government officers shall annually file a financial disclosure statement.
- Due each April
- File with the Municipal Clerk
- It is a Public Record

Ethics and Conflicts of Interest

Local Government Officer

- ... compensated or not ... part-time or full-time
 - Elected to any local office
 - On a body that can enact ordinances, approve development applications or grant zoning variances;
 - A member of an independent municipal, county or regional authority
 - A managerial executive or confidential employee of a local government agency ... but shall not mean any employee of a school district or member of a school board;

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Financial Disclosure

- Each **source** of income, earned or unearned, exceeding \$2,000
- received by the local government officer or a member of his immediate family during the preceding calendar year.
- Individual client fees, receipts or commissions received through a business organization need not be separately reported as sources of income.

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Financial Disclosure

- A publicly traded security need not be reported unless the officer or member of his immediate family has an interest in the business organization
- "Interest" means the ownership or control of more than 10% of the profits, assets or stock of a business organization but shall not include the control of assets in a nonprofit entity or labor union

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Financial Disclosure

- Each source of fees and honoraria having an aggregate amount exceeding \$250 from any single source for personal appearances, speeches or writings received by the local government officer or a member of his immediate family during the preceding calendar year

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Financial Disclosure

- Each source of gifts, reimbursements or prepaid expenses having an aggregate value exceeding \$400 ... excluding relatives ... received by the officer or a member of his immediate family during the preceding calendar year

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Financial Disclosure

- The name and address of all business organizations in which the local government officer or a member of his immediate family had an interest during the preceding calendar year

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Financial Disclosure

- The address and brief description of all real property in the State in which the officer or a member of his immediate family held an interest during the preceding calendar year.

Ethics and Conflicts of Interest

Penalties

Elected Officer or Employee

- An elected local government officer or employee found guilty ... shall be fined not less than \$100.00 nor more than \$500.00

Ethics and Conflicts of Interest

Penalties

Appointed Official or Employee

- An appointed officer or employee found guilty ... shall be fined not less than \$100.00 nor more than \$500.00;
- The board **shall** report its findings to the office or agency having the power of removal or discipline of the appointed officer or employee and **may** recommend that disciplinary action be taken

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Disciplinary Action

- The finding ... that an appointed officer or employee is guilty ... **shall be sufficient cause for his removal, suspension, demotion or other disciplinary action** by the officer or agency having the power of removal or discipline

Ethics and Conflicts of Interest

Criminal Code

N.J.S.A. 2C:27-10

- A person commits a crime if the person, as a public servant:
- directly or indirectly, **knowingly** solicits, accepts or agrees to accept any benefit, whether the benefit inures to the public servant or another person, to influence the performance of an official duty or to commit a violation of an official duty.

Ethics and Conflicts of Interest

Criminal Code

A public servant commits a crime if:

- Under color of office and in connection with any official act ... the public servant directly or indirectly knowingly receives any benefit – whether to the public servant or another person – to influence the performance of an official duty or to commit a violation of an official duty

Ethics and Conflicts of Interest

Criminal Code

A crime of the second degree, except that if the benefit solicited, accepted or agreed to be accepted or received is of a value of \$200.00 or less, any offense Is a crime of the third degree.

N.J.S.A. 2C:27-10 e

So the crime exists at all levels, but the potential penalty is less if the value was under \$200.00

Ethics and Conflicts of Interest

Is it an improper benefit?

benefit includes: any benefit from or by reason of a contract or agreement for goods, property or services if the contract or agreement is awarded, made or paid by the branch, subdivision or agency of the government that employs the public servant

Ethical Considerations

Situation # 1

Employee places an order for office supplies, and the supplier provides a “gift” based on the size of the order.

The employee receives the “gift” and keeps it, because it was not part of the supplies ordered for the municipality.

Is that improper?

Ethical Considerations

Situation # 2

After the meeting several of the governing body members and the attorney and the engineer go to the local diner for coffee and a hamburger.

At the end of the evening, the attorney or the engineer picks up the check.

Is that trivial?

Does that influence the public officials?

Ethical Considerations

Situation # 3

One of the professionals employed by the municipality sends gifts to each of the elected officials, to the Administrator, to the Clerk, to the Zoning Officer Etc.

Is that unethical?

Does it depend on the value?

Pocket calendar?

Fruit basket?

Liquor?

Playoff tickets?

Ethical Considerations

Situation # 4

The Developer explains that what they propose for your community is similar to their development in ThatTown and that they would like to arrange for a bus to take members of the staff, the governing body and the Planning Board to see the ThatTown project. They will host lunch for the group in the Community Center in ThatTown.

Ethical Considerations

Situation # 5

The Developer explains that what they propose for your community is similar to their development in Denver, Colorado, and that they would like to arrange for you, two members of the governing body and three members of the Planning Board to see the Denver project. They suggest an overnight trip and offer to cover the air fare, hotel and meals.

Ethical Considerations

Situation # 6

The Developer explains that what they propose for your community is similar to their development near Orlando, Florida, and that they would like to arrange for you, two members of the governing body and three members of the Planning Board to see the project. They suggest a weekend trip and offer to cover the air fare, accommodations at one of the Disneyworld Hotels and meals. They will host a bus tour to the development and will host a dinner to be held at a restaurant at Epcot Center on Saturday evening.

Ethical Considerations

Situation # 7

Same situation as before, but the Developer suggests that spouses be invited for the weekend trip. In order to avoid any criticism, the Developer suggests that the individuals be responsible for the air transportation for the spouses. The hotels cost nothing additional and the meal costs are regarded as trivial by the developer.

Ethical Considerations

Situation # 8

- The Developer calls and thanks you for all of your cooperation during the process of obtaining the necessary approvals. Now that the application process is completed and permits issued, he remembered that your son was a big baseball fan. They offer you two tickets for the Phillies-Yankees-Mets (team of your choice) game on Saturday night, noting that they are GREAT seats.
- Would it make a difference if it was for the Trenton Thunder?
- How about a coupon for a coffee at a WaWa?

Ethics and Conflicts of Interest

Gifts

N.J.S.A. 2C:27-10 d provides exceptions for:

- ❖ Fees prescribed by law ... or any other benefit to which the public servant is otherwise legally entitled .. If the benefit is not bartered for another benefit to influence the performance of an official duty
- ❖ Gifts or other benefits conferred on account of kinship or other personal, professional or business relationship independent of the official status of the recipient
- ❖ Trivial benefits the receipt of which involve no risk that the public servant would perform official duties in a biased or partial manner

Ethics and Conflicts of Interest

Gifts

What constitutes a “trivial benefit” ?

- Under Federal law, the standard for Federal employees is set at \$20.00.

Ethics and Conflicts of Interest

State Policy

In accordance with the New Jersey Conflicts of Interest Law, **any gift or other item of value including floral and food items** by a person or entity with whom a State employee **has had contact in his/her official capacity must be declined**, and the offer must be reported immediately and returned to ... [the] ... ,
Department Ethics Liaison Officer

Ethics and Conflicts of Interest

Ethical Conduct

The very essence of a free government consists in considering offices as public trusts, bestowed for the good of the country, and not for the benefit of an individual or a party.

John C. Calhoun

Speech, February 13, 1835

Ethics and Conflicts of Interest

Corey Kemp

Former Philadelphia City Treasurer

After conviction on 27 counts of corruption related charges

Philadelphia Inquirer, May 15, 2005

[On July 19, 2005, Kemp was sentenced to 10-years in prison]

I wish I didn't do some of the things or go to some of those places because my life isn't worth a trip to the Super Bowl. My life ain't worth a lunch.

Ethics and Conflicts of Interest

Bill's Guideline Number 1

- If your worst political enemy found out what you did and raised the issue at a public meeting, would you be embarrassed in explaining your conduct and in trying to justify your actions. If so, then don't do it in the first place.

Ethics and Conflicts of Interest

Bill's Guideline Number 2

- If your mother found out what you did, would you find it embarrassing to explain to your mother why you did it? If so, then don't do it in the first place.

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Bill's Guideline Number 3

- When you get caught are you going to find it difficult to explain to your family - especially your children - why you have been taken from your home in handcuffs?

[Note: You will be caught, no matter how careful or secretive you think that you have been.]

Ethics and Conflicts of Interest

Bill's Guideline Number 4

- Do you really think that you would have received that gift if you were not in an official position able to influence something for the gift giver? If you would not have received the gift, except for your official position then you probably should not accept it.

Ethics and Conflicts of Interest

Thomas Jefferson

Letter to his Grandson, Francis Eppes, Age 14
Monticello, May 21, 1816

Never suffer a thought to be harbored in your mind which you would not avow openly. When tempted to do anything in secret, ask yourself if you would do it in public. If you would not, be sure it is wrong.

Ethics and Conflicts of Interest

Corruption never has never been compulsory.

Anthony Eden (1897-1977)

British Prime Minister, 1955-1957

Ethics and Conflicts of Interest

- Integrity costs you nothing.
- Nobody owes you anything, including special treatment.
- Public service is about service, not profit.
- Unethical conduct will cost you and your family in reputation, financially and even in your freedom.
- Honor comes in doing the right thing.

Ethics and Conflicts of Interest

Theodore Roosevelt

President of the United States

The one thing that I want to leave my children is my good name.



"That's all Folks!"

William J. Kearns, Jr.

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