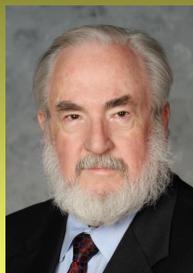


**Open Public Records Act
Ethics & Conflicts of Interest
Public Meetings ~ Civility**

~~~~~

**NJ League of Municipalities  
January, 2018**



**William John Kearns, Jr.**

**HELMER, CONLEY & KASSELMAN, P.A.**

**ATTORNEYS AT LAW**

**Willingboro, New Jersey**

**General Counsel, NJ League of Municipalities  
Past President, International Municipal Lawyers Association**



**Trishka Waterbury Cecil**  
**Mason Griffin & Pierson**  
 Princeton, New Jersey

Deputy General Counsel, NJ League of Municipalities  
 Past President, NJ Institute of Local Government Attorneys

# Open Public Records

BOROUGH OF RIDGEFIELD  
 Bergen County, New Jersey

Meeting December 26, 2001

Presented by Mayor Stewart V. Yeale

RESOLUTION NO. 335-2001

WHEREAS, Falun Dafa, also known as Falun Gong, is considered to be a form of exercise that draws energy into the body in order to maintain health and a peaceful approach to life; and

WHEREAS, the United States Government is now on record as "deeply disturbed" by reports that China has further intensified its repression of Falun Dafa adherents; and

WHEREAS, this summer thousands of Falun Dafa supporters have marched through the Atlantic States on their way to Washington in order to protest the Chinese Government's persecution of Falun Dafa followers; and

WHEREAS, the Chinese Government's actions against Falun Dafa practitioners represent a severe example of violating human rights and civil liberties;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Ridgefield that support be given to those who follow the peaceful example of Falun Dafa members, and further that harsh, brutal and repressive practices of the Chinese Government against Falun Dafa followers be condemned, and that all Falun Dafa prisoners be freed by the Chinese Government; and

BE IT FURTHER RESOLVED that a certified copy of this Resolution be forwarded to the Honorable George W. Bush, President of the United States of America, the Honorable Colin L. Powell, Secretary of State, United States of America, The Honorable Jan Corwin, United States Senate, the Honorable Robert C. Torricelli, United States Senate, the Honorable Steven Rothman, United States House of Representatives, the Honorable Donald D'Amico, Acting Governor, State of New Jersey, the Honorable Yang Jiechi, Ambassador of the People's Republic of China, Washington D.C., the Honorable Zhang Hongxi, General Consul, the People's Republic of China, New York, New York and the Honorable Mayor of Shanghaiang City, Hebei Province and Nanjing City, Xuzhou City of Jiangsu, Province of the People's Republic of China.

Approved:

*Stewart V. Yeale*  
 Stewart V. Yeale, Mayor

Attest:

*Joyanne Scaglione*  
 Joyanne Scaglione, Borough Clerk

|             | COUNCIL VOTE |    |         |        |
|-------------|--------------|----|---------|--------|
|             | YE           | NO | ABSTAIN | ABSENT |
| Mayor       | X            |    |         |        |
| Alder       | X            |    |         |        |
| Trotter     | X            |    |         |        |
| Callorilla  |              |    |         | X      |
| Barnard     | X            |    |         |        |
| Acosta      | X            |    |         |        |
| Mayor Yeale |              |    |         |        |

## Open Public Records

It's OPRA

**O**PEN

**P**UBLIC

**R**ECORDS

**A**CT

## Open Public Records

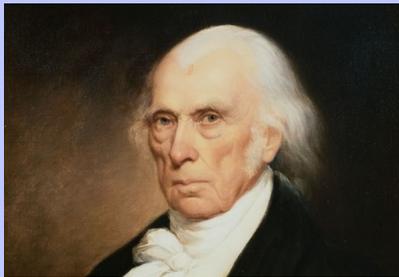
Not ..... OPRAH





Patrick Henry

*"The liberties of a people never were,  
or ever will be, secure when the transactions  
of their rulers may be concealed from them."*



James Madison

*"A popular Government without popular  
information, or the means of acquiring it,  
is but a Prologue to a Farce or a Tragedy;  
or, perhaps, both."*

## Open Public Records

### What is a Public Record?

- If you have it, it is a public record, unless it falls under an exception.
- Agendas, Minutes, Resolutions, Ordinances, Contracts, Bid Documents, Reports, Correspondence, E-mail messages are all included.

## Open Public Records

### Responding to a request

- The Municipal Clerk **is** the Custodian of Records;
- Must respond within 7 days with the record or with a response that states when the record will be available;
- The Clerk can be fined for failure to comply with the OPRA requirements.
- **Anyone who interferes with compliance can be fined.**
- The request must identify the record requested.
- If the record does not exist, OPRA does not apply.
- There is no requirement to research or to create a record.
- **There is NO exception for records that might be embarrassing.**

## Open Public Records

### Responding to a request

- A Mayor or member of the Governing Body does NOT need to submit an OPRA request in order to obtain a document.
- Exceptions apply – such as personnel files.
- Supply to all.....

## Open Public Records

### Record does not exist

- Requestor seeks a record that does not exist, i.e., a log of all e-mail messages between certain dates involving specific officials.
- Municipal Clerk denies the request on the grounds that no such record exists.
- Requestor sues to compel the creation of the e-mail log.
- Trial Court rules that the creation of the e-mail log would be no substantial burden to the municipality and orders that it be created
- Appellate Division reverses, holding no obligation to create a record that does not exist.
- Supreme Court says – produce the record it is not a burden

Paff v Galloway Township  
NJ Supreme Court June 30, 2017

## Open Public Records

### Agenda Materials

**Backup materials for the agenda (attachment reports and referenced documents) ARE Public Records and must be made available in electronic format along with the agenda in advance of the meeting.**

**Opderbeck v Midland Park Board of Educations**

**Backup materials for the agenda are NOT part of the agenda  
APPELLATE DIVISION - August 15, 2015**

“We hold the term "agenda," as used in N.J.S.A. 10:4-8(d), does not impose a legal obligation on public bodies to provide copies of any appendices, attachments, reports, or other documents referred to in their agendas.”

## E-MAILS

- E-mails are public records so long as they are “made, maintained or kept on file in the course of his [or her] or its official business.” They include emails from both governmental and personal email addresses.

- *297 Palisades Avenue Urban Renewal Company LLC v. Borough of Bogota*
  - *NJ Superior Court, Law Division, Bergen County*
    - *March 26, 2014*
    - *Hon. Peter E. Doyne, A.J.S.C.*

## THE PERILS OF E-MAIL

- “Time for some traffic problems in Fort Lee”  
Bridget Anne Kelly

- “Got it.”  
David Wildstein

Both emails sent from personal accounts

## Open Public Records

### Common Law Public Record?

- Balancing Test
- Public right to know
- Need for confidentiality
  - *In the Matter of Seven State Troopers, App Div, February 25, 2010*
  - *Paff v Borough of Garwood*

## Records Required to be Maintained

- Public Record: one required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law, or directed by law to serve as a memorial and evidence, of something written, said, or done, or a written memorial made by a public officer authorized to perform that function, or a writing filed in a public office ...the elements essential to constitute a public record are...that it be a written memorial, that it be made by a public officer, and that the officer be authorized by law to make it. Josefowicz v. Porter, 32 N.J. Super. 585, 591 (App. Div. 1954) as cited in Nero v. Hyland, 76 N.J. 213 (1978).
- Examples: Accident Reports, Assessment Records, Municipal Hearings, Voter Registration Records, Tax Records, Meeting Minutes (except executive session), Background Investigations, Budgets, Law Enforcement Investigative Reports.

## OPRA –vs- Common Law

- Common law right of access is unaffected by OPRA. They operate independent of each other. Many requests for records now assert both laws. Thus, any response must consider both when preparing a reply.

## Open Public Records

### Privacy Concerns

**What about ....**

**E-Mail**

**E-Mail Addresses?**

**Records concerning Minors?**

**What is the reasonable expectation of privacy?**

### Privacy Concerns

Data such as Social Security numbers, credit card numbers, unlisted telephone numbers and driver license numbers are generally exempt from disclosure.

(N.J.S.A. 47:1A-1.1)

Where there is a reasonable expectation of privacy of personal data given to a governmental agency, the court will perform a balancing test to determine whether the information should be released.

*Bolkin v. Borough of Fairlawn*, Docket No. BER-L-6547-12 (Law Div., Dec. 5, 2012)

## Open Public Records

### Privacy Concerns

See the report of the  
New Jersey Privacy Study Commission

<http://www.nj.gov/privacy/>

## Open Public Records

### Settlement Agreements

#### **Confidentiality Provisions**

##### **Public right to know prevails**

*Asbury Park Press v Monmouth County*

*NJ Supreme Court, Jan 25, 2010*

##### **Counsel Fees**

*Paff v West Deptford, App Div, Feb 18, 2010*

## Open Public Records

### Working **WITH** the Custodian

#### Submit a request:

**Provide within 7 days all copies of ordinances, resolutions, reports, memoranda, notes, e-mail messages, relating in any way to the design, maintenance or motor vehicle accidents occurring at the intersection of Main Street and County Route 555 since January 1, 1990, including all personnel and disciplinary files related to any police officer or other public employee involved in any such accident.**

**But, be Reasonable - be more specific**

## Open Public Records

### Custodian Seeks Legal Advice

**It is appropriate for the custodian to seek legal advice in order to respond to a request, BUT that does not mean that the custodian does not have to respond within the 7 days. The custodian must advise the requestor that additional time is needed, and indicate how much time is required to respond to the request.**

*Richard Rader v. Township of Willingboro, GRC Complaint No. 2007-239, decided June 25, 2008*

## Open Public Records

### Going to Court

Superior Court has Jurisdiction

**BUT**

Complaint must be filed within 45 days of the denial of access to the requested record.

*Mason v. City of Hoboken*, NJ Supreme Court, July 22 2008

While there is a 45 day limitation on filing in Superior Court, the Government Records Council has no such restriction. Thus, a complaint to the GRC may be filed at any time.

*Knehr v. Township of Franklin*,  
GRC Complaint No. 2012-38 (Dec. 18, 2012)

## Open Public Records

### Record Retention Requirements

NJ Division of Archives and Records Management

[www.nj.gov/state/darm](http://www.nj.gov/state/darm)

**Municipal Agencies Records Retention Schedule**  
**NJ Uniform Electronic Transactions Act (UETA)**

Circular Letter 01-01-ST

**E-Mail**

Circular Letter 03-10-ST

## eMail & Social Media Issues



Fun and Dangerous

## ELECTRONIC COMMUNICATIONS

### E-Mail Issues

- **E-Mail is a document**
- **E-Mail on public business is a public record**
- **Even on a personal computer**
- **E-Mail is really not private**
- **E-Mail is discoverable**
- **E-Mail can come back to haunt you**
- **E-Mail can be embarrassing**
- **E-Mail exchanges can be a meeting under OPMA**

## Open Public Meetings

### What constitutes a meeting?

- Telephone Conference Call
- E-Mail exchange can constitute a meeting
  - Burlington County Prosecutor to the Evesham Council
  - Sent to all municipal attorneys in the County
  - Sample policy on NJLM website
- Substance or Procedural or transmitting information

## Open Public Meetings

### How about a political caucus? What about being at the same ball game?

- “Typical partisan caucus meetings and chance encounters of members of public bodies are neither covered by the provisions of this act, nor are they intended to be so covered.”

*N.J.S.A. 10:4-7*

## Open Public Meetings

### Meetings of those elected, but not yet sworn in to office

- In an unpublished decision, it was held that meetings of council members-elect, along with one incumbent of the same political party, where they decided on appointments and notified people who were or were not going to be appointed, was not a violation of the Open Public Meetings Act. Since the newly-elected had not taken office, the letters were also held not subject to the Open Public Records Act.

*Kuehnappel v. Chintall*, (Township of West Deptford), NJ Superior Court, Appellate Division, decided July 15, 2014

## ELECTRONIC COMMUNICATIONS

### E-Mail Issues

“The estranged wife of a millionaire developer found slain this month in his home fantasized in an e-mail last year about "pummeling him to death," but her lawyer said Tuesday she was only venting her frustrations over her husband's extensive legal and other troubles.”

**Stamford, CT**

**Associated Press, April 19, 2006**

## ELECTRONIC COMMUNICATIONS

### E-Mail Issues

The President of the University of Tennessee at Knoxville resigned after intimate e-mail messages between the President and an Administrator were published in the local newspaper.

June, 2001

## ELECTRONIC COMMUNICATIONS

### E-Mail Issues

Legislator thinks that his e-mail messages to a female lobbyist containing explicit sexual messages are “private” ..... And then ..... The New York Post publishes almost 300 of the very explicit messages on their website.

March, 2013

## ELECTRONIC COMMUNICATIONS

### E-Mail Issues

An attorney representing Eli Lilly accidentally sent an e-mail, intended for another lawyer for the company to a reporter with the same last name. The e-mail contained information on confidential settlement negotiations between Eli Lilly and the US Justice Department on an investigation into Eli Lilly's marketing of a drug. The story of the negotiations was published in the *New York Times*.

February, 2008

## ELECTRONIC COMMUNICATIONS

### Tip #1

**Do not compose – and especially DO NOT SEND an e-mail when you are angry.**

## **ELECTRONIC COMMUNICATIONS**

### **Tip #2**

**Check and then check again the name and address of your intended recipient.**

**And then check it again before you SEND.**

## **ELECTRONIC COMMUNICATIONS**

### **Tip #3**

**Verify the attachment to make sure that it is the appropriate and correct item before you attach it.**

**To avoid errors, never attach something named “Document.pdf” or “Document.doc” or “Scan478897656879” – make sure your documents are named so that you can easily identify the attachment.**

## **ELECTRONIC COMMUNICATIONS**

### **Tip #4**

**Do not eMail inside jokes or use derogatory nicknames to reference others, whether officials, co-employees, citizens, consultants.**

**Assume that your eMail will be read by the very person that you are referencing or about whom you are making the joke.**

## **ELECTRONIC COMMUNICATIONS**

### **Tip #5**

**Avoid DANGER phrases**

- **I really shouldn't put this in writing.**
- **Delete this e-mail as soon as you have read it.**
- **Don't tell anyone else, but .....**
- **Don't ask. You don't want to know.**
- **I'm not sure this is really legal, ethical, proper.**
- **The attachment is for your eyes only.**

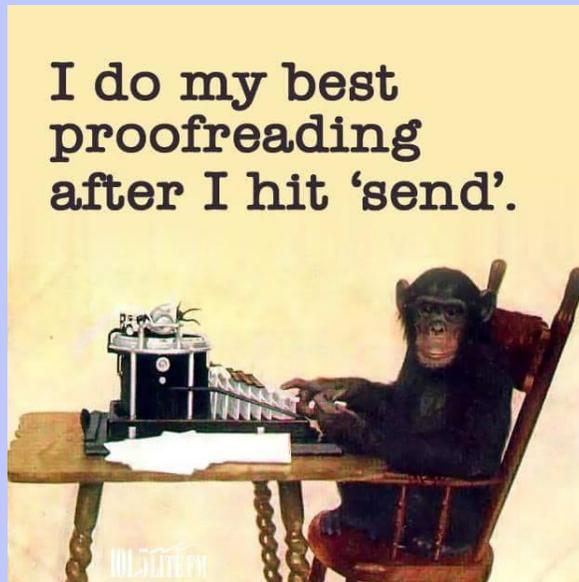
## ELECTRONIC COMMUNICATIONS

### Tip #6

**After composing your e-mail, save it as a draft and go back and re-read it a half-hour later. Then remember all of the other rules as you edit it and before you send it.**

## ELECTRONIC COMMUNICATIONS

**I do my best  
proofreading  
after I hit 'send'.**



## ELECTRONIC COMMUNICATIONS

Do you Tweet?



## ELECTRONIC COMMUNICATIONS

Be careful what you Tweet



**Don't think your tweets are private. Assume that they will be seen by the person that you LEAST want to see them.**

## ELECTRONIC COMMUNICATIONS

### twitter

- **Twitter is a way to send short messages – not more than 140 characters – on the author’s Twitter page that can be read by any of the author’s followers. Those followers can post responses.**
- **Once sent, the messages can be re-sent and distributed to an ever-increasing number of people.**
- **Messages cannot be recalled.**
- **The Library of Congress has and is archiving ALL Twitter messages ever sent.**

## ELECTRONIC COMMUNICATIONS



Twitter mistakes  
come back to  
haunt people

**Former** Congressman Anthony Weiner (New York) sent “inappropriate” twitter messages with photo attachments to a number of women. The twitter messages were posted and then forwarded by others.

- **He claimed that his Twitter account was “hacked” - He Lied.**
- **He was (a) careless (b) stupid (c) failed to understand the internet.**
- **His political career came to an abrupt end –**
- **So it was thought ..... but then he was a candidate for Mayor of the City of New York – and lost in the Primary**

## ELECTRONIC COMMUNICATIONS



**Michigan Judge Wade McCree Jr**

## ELECTRONIC COMMUNICATIONS

Smart People Do Dumb Things



**Michigan Judge Wade McCree Jr**

## ELECTRONIC COMMUNICATIONS

Smart People Do Dumb Things  
and do not learn from mistakes

**Michigan Judge Wade McCree Jr**

**Admits to having an affair – in his chambers – with the Plaintiff in a case in his court – and impregnating her.**

**He has been removed from office by the Michigan Supreme Court (3-26-14) which also ruled that if he was re-elected in November 2014, he will be suspended for the entire 6-year term. He was not elected.**

## ELECTRONIC COMMUNICATIONS



## ELECTRONIC COMMUNICATIONS

### facebook

Facebook helps you connect and share with the people in your life.



## ELECTRONIC COMMUNICATIONS

### facebook

- Available to anyone over 13 with an e-mail address
- Profiles of the user
- Text messages
- Photographs
- Available to almost anyone
- Shows up in GOOGLE searches

## Social Media and Litigation

- While your case is active, do not use social media.
- Don't. Period. This includes everything from Facebook, to Twitter, to Instagram, to blogging — even if you're “anonymous” or doing so under a pseudonym.
- The opposing side will be able to find anything you post and will use it against you. You should pretend that anything you post will end up on the front page of the newspaper.
- Finally, don't ever send confidential information over social media. Social media is never confidential!

## ELECTRONIC COMMUNICATIONS

In this day of wide dissemination of thoughts and messages through transmissions which are vulnerable to interception and readable by unintended parties, armed with software, spyware, viruses and cookies spreading capacity; **the concept of internet privacy is a fallacy upon which no one should rely.**

*New York v. Klapper*, (N.Y. City Crim. Ct. Apr. 28, 2010)

## ELECTRONIC COMMUNICATIONS

In all electronic communications, e-mail, Twitter, Facebook, social media, recall the words from the New Testament, Luke 8:17

“For nothing is hidden,  
that will not be revealed;  
nor anything secret,  
that will not be known  
and come to light.”

## Ethics and Conflicts of Interest



## 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.



We do live in a fishbowl .....  
..... and EVERYBODY is watching!!

## 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;

## Ethics and Conflicts of Interest

### 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

## Ethics and Conflicts of Interest

### 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

## Ethics and Conflicts of Interest

### 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 30th
- File electronically
- It is a Public Record
- [http://fds.state.nj.us/njdca\\_prod/fdssearch.aspx](http://fds.state.nj.us/njdca_prod/fdssearch.aspx)
- **Expect financial sanctions for failure to file on time.**

## 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;

## Ethics and Conflicts of Interest

### 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.

## Ethics and Conflicts of Interest

### 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

## Ethics and Conflicts of Interest

### 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

## Ethics and Conflicts of Interest

### 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

## Ethics and Conflicts of Interest

### 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

## Ethics and Conflicts of Interest

### 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
- Expect that the range of penalties will be increased, probably to a \$10,000 maximum, the same as the State Ethics Code

## 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

## 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

## 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 to 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 town officials asks two Public Works employees to work on Saturday to cut his lawn .....

.... And offers to pay them for the work

.... The two employees have their own "lawn service"

.... How do you avoid the "appearance" of impropriety

## Ethical Considerations

### Situation # 4



- 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.
- Any difference if it was for a Minor League game?
- How about a coupon for a coffee at a WaWa?

## Ethical Considerations

### Situation # 5

- A contractor who does work for the municipality mentions to you that he was contacted by Council Member A who wants some work done on his house and who said “I expect you to give me a good price, because you know that I have to vote on your contracts with the town.”
- Is the Council Member corrupt or just stupid?
- What do you do?
- Do you have any obligation to report it to anyone?

## Ethics and Conflicts of Interest

### Gifts

What constitutes a *“trivial benefit”* ?

- Under Federal law, the standard for Federal employees is set at \$20.00 or \$50.00 or \$300.00.
- Under NJ law – there is no guidance

## Ethics and Conflicts of Interest

### I'm not worried

Everybody does it .....

I won't get caught .....

The public won't pay attention .....

I'm too important to prosecute .....

It doesn't just happen to the *“little guy”* .....

## Ethics and Conflicts of Interest



## Ethics and Conflicts of Interest

### Rod Blagojevich

Governor of Illinois, he tried to “sell” an appointment to fill a US Senate vacancy.

Impeached  
Tried and Convicted  
Now living in the  
Federal Correctional Institution  
Terre Haute, Indiana  
6 ½ years



## Ethics and Conflicts of Interest

### Joseph Spicuzzo

Sheriff, Middlesex County, New Jersey



Selling Jobs in His Office  
Entered Guilty Plea: June 25, 2013  
Plea Bargain: 9 years with 2 years parole ineligibility

## 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

### Mark Civarella

Luzerne (PA) County President Judge

Involved in sentencing juveniles to serve time for minor offenses in private jail facilities in return for \$2.8 million in kickbacks.

Found Guilty of Racketeering  
Resigned from office  
Disbarred  
Sentenced to 28-years in prison  
  
Hundreds of juvenile sentences  
OVERTURNED



## Ethics and Conflicts of Interest

### Diane Marie Hathaway

Justice, Michigan Supreme Court



Elected: November 4, 2008  
Resigned: January 21, 2013  
Entered Guilty Plea to Mortgage Fraud: January 29, 2013  
Sentenced to 1-year in Federal prison: May 28, 2013

## Ethics and Conflicts of Interest

“I’m so sorry.”

JOSE TORRES, former Mayor of Paterson NJ



As he was sentenced to 5-years in prison for using city employees as workers at a warehouse owned by his family.  
(November 14, 2017)

## Ethics and Conflicts of Interest

Zheng Xiaoyu

Former Commissioner

China’s Food and Drug Administration

Convicted of taking \$850,000 in bribes from  
companies seeking approval for medicines.



Convicted - May 29, 2007

Executed - July 10, 2007

## 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.

## Ethics and Conflicts of Interest

### 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?

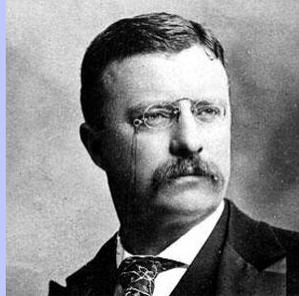
[Note: You will be caught, no matter how careful or secretive you think that you have been.]

## 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

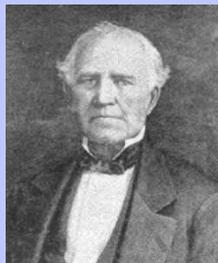


The one thing that I want to leave my children is my good name.

Theodore Roosevelt  
Governor of the State of New York  
President of the United States

## Ethics and Conflicts of Interest

I would give no thought of what the world might say of me, if I could only transmit to posterity the reputation of an honest man.



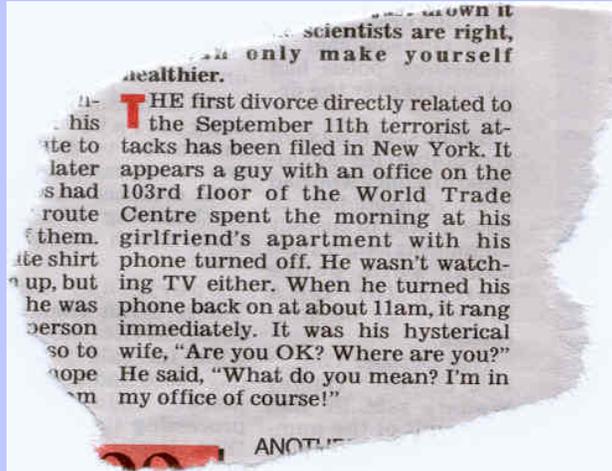
**Sam Houston**

(1793-1863)

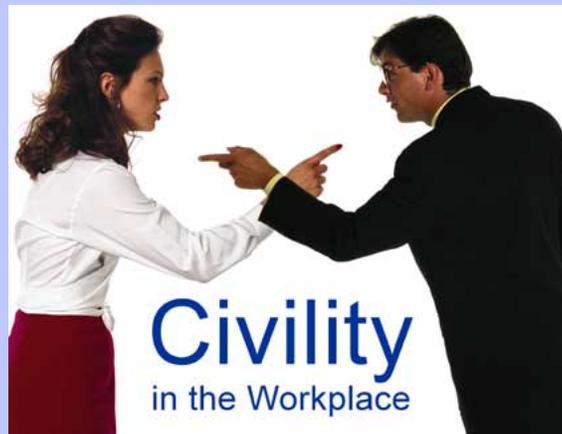
Governor of the State of Tennessee  
President of the Republic of Texas  
United States Senator  
Governor of the State of Texas

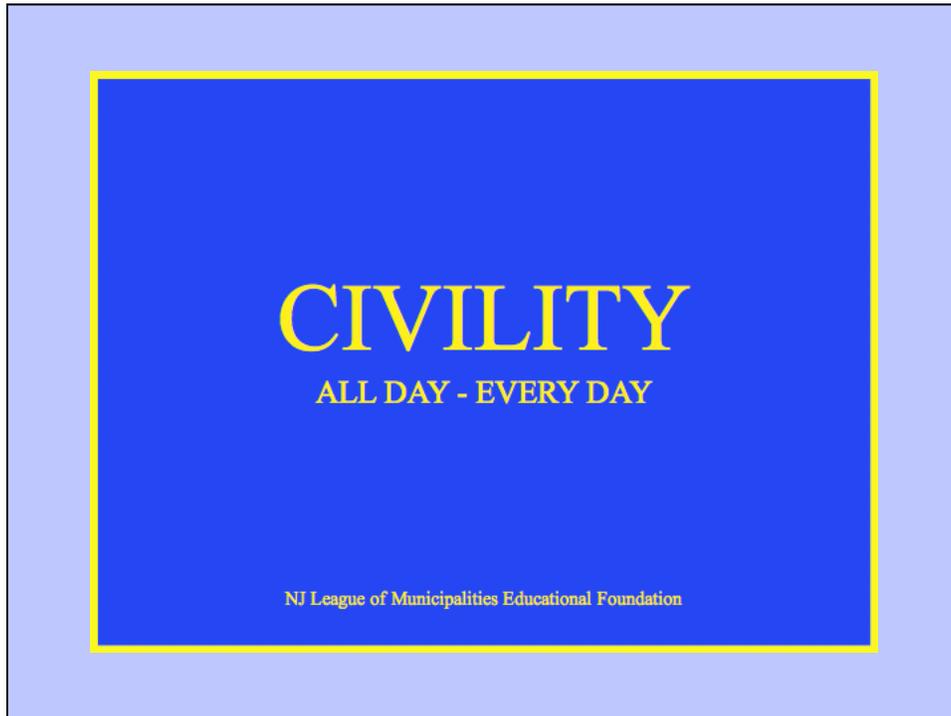
## Ethics & Personal Integrity

You will get caught!



## Choose Civility





## Choose Civility

Civility? What's that?

- Civil discussions with colleagues
- Civil discussions with the public
- Civil discussions with staff and employees
- Incivility = Incivility

## Choose Civility

### Reacting to Audience Incivility



- Citizen crudely insulting Mayor
- Citizen “rolling eyes” to express displeasure
- How to defuse the situation

## Choose Civility

### WRONG RESPONSE!!



- Former Teacher of the Year
- Speaks out politely against raise for Superintendent
- Arrested, handcuffed, taken to jail because she exceeded the 3-minute time limit

## Choose Civility

### Hostility and Safety

- Citizens bring their complaints to the Council meetings and want to know that they are heard.
- Citizens who feel that they have been treated unfairly can exhibit hostility.
- Sometimes citizens are hostile because of the topic or just because they are angry or having a bad day
- If not handled well, the hostility can turn into violence

## Choose Civility

### Hostility and Safety



## Choose Civility

### Hostility and Safety

- Panama City, Florida (2010)
  - Citizen upset comes to Board of Education meeting, fires at Board members, fortunately only the gunman was killed.
- Kirkwood, Missouri (2008)
  - Citizen upset comes to Council meeting, kills two council members, other officials
- Clarksville, Tennessee (2007)
  - Citizen upset at zoning variance denied, approaches Council, says “you’ve put me out of business,” draws gun and commits suicide.

## Choose Civility

### Hostility and Safety

- Suwanee, Georgia (April 10, 2013)
  - Man in foreclosed home, about to be evicted, calls in a false heart attack report. Firefighters respond with truck and ambulance. He takes 5 firefighters hostage. Demands that utility and cable services be turned back on. SWAT team kills the hostage-taker.
- Ross Township, Pennsylvania (August 5, 2013)
  - Rockne Newell, evicted from his home by court order due to unsanitary conditions and code violations blasted his way into a Board of Supervisors meeting killing the zoning officer and two residents at the meeting. He entered a guilty plea in May, 2015, and was sentenced to three consecutive life terms **plus** 61 to 122 years on related charges.

## Choose Civility



**CIVILITY  
SPOKEN HERE**

**ALL DAY  
EVERY DAY**

??? Questions ???

