

Municipal Ethics

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MUNICIPAL ETHICS LAW

ETHICS and CONFLICT OF INTEREST

Local Government Ethics Law

- ▶ Establishes minimum standards of conduct.
- ▶ Enforced by the Local Finance Board
 - ▶ They decide where the line is and if you crossed it.
- ▶ Sanctions include fines; punitive damages; jail time
- ▶ The sanctions are becoming more severe
- ▶ Harm to reputation; loss of trust
- ▶ Insurance will not cover

GUT FEELING – COMMON SENSE

- ▶ Does it feel wrong
- ▶ Is it counterintuitive



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 insubstantial conflict with the proper discharge of his duties in the public 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.

Wyzykowski v. Rizas, 132 N.J. 509 (1993)

- ▶ (1) “Direct pecuniary interests,” when an official votes on a matter benefiting the official's own property or affording a direct financial gain;
- ▶ (2) “Indirect pecuniary interests,” when an official votes on a matter that financially benefits one closely tied to the official, such as an employer, or family member;
- ▶ (3) “Direct personal interest,” when an official votes on a matter that benefits a blood relative or close friend in a non-financial way, but a matter of great importance, as in the case of a councilman's mother being in the nursing home subject to the zoning issue; and
- ▶ (4) “Indirect Personal Interest,” when an official votes on a matter in which an individual's judgment may be affected because of membership in some organization and a desire to help that organization further its policies.

CONFLICT OF INTEREST



Examples:

- ▶ Signing bills for vendors with whom your private company does business.
- ▶ Voting on approving a vendor with whom your private company does business.
- ▶ Recommending municipal vehicles to be serviced by your garage or a garage owned by your immediate family
- ▶ Voting on appointing or even recommending a member of your family to a position in municipality

Conflicts of Interest - cont'd.

➤ **Personal relationships:**

- Must disclose personal relationships, so that actions can be taken to minimize or remove any potential conflict of interest.
- If application creates even a potential conflict, you should abstain from voting and participating in the deliberative process

Gunther v. Planning Bd. of Bay Head

7 members of a Planning Board, who were also members of a private yacht club, had a conflict of interest with application of adjacent marina.

Ethics and Conflicts of Interest



STANDARDS OF CONDUCT

No local government officer or employee shall undertake any employment or services, 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.

RECEIVING GIFTS

Local Government Ethics Law, N.J.S.A. 40A:9-22.1

A PUBLIC EMPLOYEE OR MUNICIPAL OFFICIAL CANNOT ACCEPT A GIFT OR GRATUITY IF:

THE CIRCUMSTANCES SURROUNDING RECEIVING THE GIFT COULD BE INTERPRETED TO SHOW THAT THE GIFT WAS GIVEN “TO TEMPT THE OFFICIAL TO DEPART FROM SWORN PUBLIC DUTY”

PERSON CAN VIOLATE THE LAW, EVEN IF NOT “DISHONEST”

THE QUESTION IS WHETHER THERE IS A “POTENTIAL” FOR CONFLICT

ZERO TOLERANCE POLICY

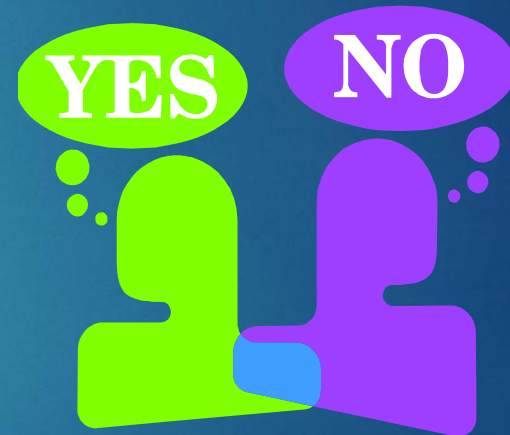
**WHEN IS A
PAYMENT A
BRIBE?**



CODE OF ETHICS FOR OFFICERS AND EMPLOYEES OF MUNICIPALITIES AND COUNTIES

A broadly worded statute

- The officer/employee must decide for himself
- Was a gift given to influence him in public duties?



STATE'S GUIDELINES PROVIDE EXAMPLES

Unsolicited Nominal Gifts Offered to Public:

- ❑ Pocket or wall calendars
 - Where is calendar displayed
 - Does use of the calendar create an impression of an endorsement of the company?

- ❑ Hats, coffee mugs, mouse pads
 - How is the product used by the officer/employee?



WHAT YOU SHOULD DO IF UNCERTAIN WHETHER YOU CAN ACCEPT A GIFT

- Contact your Local Finance Board and seek an advisory opinion
- (609) 292-0479
- Ask your Administrator/
Clerk

COMPLAINT PROCEDURE

- Someone files a written complaint alleging employee's action violated the Code of Ethics regarding gifts or recusal issues
- Local Finance Board investigates the complaint
- Local Finance Board decides whether the complaint is
 - Within its jurisdiction or
 - Frivolous

FRIVOLOUS COMPLAINTS

- If outside jurisdiction/frivolous
- Board writes a decision regarding this conclusion
- Sends decision to person complaining
- Sends decision to officer/employee

IF BOARD DECIDES COMPLAINT IS NOT FRIVOLOUS

NOT A DETERMINATION COMPLAINT IS VALID – JUST NOT FRIVOLOUS AND WITHIN THE BOARD'S JURISDICTION

- BOARD NOTIFIES THE ACCUSED EMPLOYEE/OFFICER
- BOARD'S STAFF CONDUCTS AN INVESTIGATION
- ACCUSED CAN PRESENT A STATEMENT OR OTHER INFORMATION WITHIN 30 DAYS
- BOARD OBTAINS ADDITIONAL INFORMATION FOR OTHER PERSONS WITH RELEVANT INFORMATION

CONCLUSION OF INVESTIGATION

- Board's staff presents results and information to the Board
- Board may direct complainant or accused to appear before the Board
- Accused may request to appear, but not required unless the Board directs
- If the Board concludes no violation of Ethics Law, Board issues a notice of dismissal
 - sends to the accused
 - sends to complainant

IF VIOLATION FOUND

- If two-thirds vote by Board finds violation
- Board issues notice of violation to accused
- Within 30 days accused may request an administrative hearing to contest finding
- Must file request in Board's office
- If not timely filed, the order deemed final
- If no hearing request or not timely filed, then order deemed final



ADMINISTRATIVE HEARING

- Can be conducted by Local Finance Board
- Board can transfer to the OAL as a “contested case”
- OAL reviews submissions and issues decision
- ALJ issues decision



ADVISORY OPINIONS



- Employee/officer can ask the Board for an opinion if concerned about future activities
- Advisory opinions generally not made public
- If two-thirds of the Board wants opinion public, then opinion is public
- Even if public, the name of the officer/employee generally not disclosed
- Cannot ask for opinion for conduct which has already occurred
- Must request opinion on future conduct

Ethics and Conflicts of Interest

Penalties

Appointed Official or Employee

- ▶ An appointed officer or employee found guilty. .
shall be fined not less than \$100, nor more than \$500.
- ▶ 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 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

Financial Disclosure

- ▶ Local government officers shall annually file a financial disclosure statement.
- ▶ Due each April 30th.
- ▶ File with the Municipal Clerk.
- ▶ It is a Public Record.
- ▶ Expect financial sanctions for failure to file on time.

Outside Employment and Activities

Use of Public Resources

Public time and resources cannot be used for outside activities.

Telephones, fax machines, e-mail, copy machines, mail service and office supplies

Solicitations of individuals you come into contact with through public job for outside activities or business are prohibited.

Fundraising

You may not solicit or otherwise support fundraising in the workplace, i.e.:

- Girl Scouts
- School Fund Raising
- American Cancer Society

WHAT DO YOU DO?

QUESTION

1. Municipal employees are permitted to accept gifts valued at \$25.00 or less.

▶ True

▶ False

ANSWER

False

Local Government Ethics Law does not contain a dollar limit.

QUESTION

2. Municipal officers and employees are not permitted to accept coffee, donuts or bagels at a meeting with an agency vendor.

- ▶ True
- ▶ False

ANSWER

False – coffee, donuts, etc. are not considered gifts under ethics rules. They are “modest snacks” and therefore allowed.

QUESTION

3. Alice is the municipal engineer. She is currently reviewing a permit application submitted by ABC Company. ABC Company has sent two tickets to the NCAA Final Four to Alice's husband, Jack. Jack may accept the tickets because he is not a municipal employee.

- ▶ True
- ▶ False

ANSWER

False – the Ethics Law prohibits gifts to members of an employee's immediate family.

QUESTION

4. A new Italian restaurant recently opened in town. The restaurant sends out a flyer announcing that every Wednesday is “Police Officer Day” and all municipal police officers will receive a 20% discount. Are you permitted to accept the discount?

▶ Yes

▶ No

ANSWER

No, unless this discount is available to the public or all municipal employees.

QUESTION

5. Alice, the Tax Assessor, is the luncheon speaker at the Builders Association's annual conference in Atlantic City. The Association is also sponsoring a golf tournament after the luncheon. May Alice accept the lunch from the Association?

- ▶ True
- ▶ False

ANSWER

Yes. Even though the Association may have business with the Tax Assessor's Office, because Alice is a speaker she may accept lunch.

QUESTION

6. Is Alice permitted to participate in the golf tournament at the expense of the Association?

- ▶ Yes
- ▶ No

ANSWER

No, because golf is collateral to the event. She may participate if she pays the cost herself.



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