

BASIC RULES OF ETHICS & CONFLICTS OF INTEREST

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Ethics v. Conflicts of Interest

Ethics - right v. ~~wrong~~

Conflicts of Interest:

- (1) The American ideal: Government is a public trust “to be carried out by disinterested men.” *
- (2) Conflict between private interest and public duties.

* [Waller Lippman, A Theory About Corruption.](#)

What People Think Matters

“The perception of integrity in government is no less important than the reality of integrity in government. Both are essential because regardless of how honest public officials are in fact a democratic system of government cannot function properly if the public believes its officials are corrupt.” *

*Govt. Ethics Law: Myths And Myths, 40 N.Y.L. Sch. Rev. 177

Misconduct levels high in government and level highest in local governments. **

According to one study, 63% of local government employees have seen at least one form of misconduct in the last year.

** Ethics Resource Center, National Government Ethics Survey (2007)

ADN Headline

Mayor resigns amid spending charges

City credit card used for personal expenses including booze

Factual Findings by City Council:

1. Mayor used City's credit card for personal expenses and facilitated the use of the card by his wife.
2. Mayor double-billed the City by picking up both per diem and actual reimbursement for expenses.
3. The Mayor directed the City to write a check to cover an accident the Mayor had while intoxicated.
4. The Mayor went to the Fairbanks AML Conference during which he was paid his salary and per diem, but did not actually attend any portion of the conference, nor did he perform any City business.
5. Mayor admits to failing to attend a scheduled meeting with the City Attorney while in Fairbanks.

2015 USA Today Headline

Ex-Chicago school chief pleads guilty to steering \$23 million in contracts.

1. A scheme to steer \$23 million in contracts to her former employer in exchange for bribes and kickbacks that would have netted her more than \$2 million.
2. The school system, much like the city, is under intense financial pressure as it faces a nearly \$500 million hole in its budget for the current school year and a teachers' pension that is underfunded by about \$10 billion.
3. The companies allegedly planned to conceal some of the kickback money by funneling it into accounts set up in the names of two of Byrd-Bennett's relatives, according to the indictment. Solomon and Vranas allegedly presented Byrd-Bennett with two college fund accounts, each containing \$127,000, that were set up for two of her relatives, the indictment said.

2015 USA Today Headline

4. The indictment also alleges that Solomon offered to arrange for jobs for friends of Byrd-Bennett in exchange for contracts.
5. Byrd-Bennett also received meals, an airplane ticket and tickets to basketball and baseball games as part of the scheme, the indictment alleges.
6. “I have tuition to pay and casinos to visit (: [.],” Byrd-Bennett wrote in one email allegedly discussing the kickbacks.
7. In another email in late 2012, Solomon told Byrd-Bennett: “It is our assumption that the distribution will serve as a signing bonus upon your return to SUPES/Synesi. . . .”

2012 ADN Headline

Another court case alleging Pebble conflicts embroils Bristol Bay officials.

1. Among other things, the suit alleges that . . . Mayor of the borough, and borough Assemblywoman . . . both failed to disclose their financial relationship with Pebble Partnership while voting on issues that would affect the mine.
2. They also voted on issues that would affect Pebble.
3. Anelon does not work directly for Pebble. She does, however, work for Iliamna Development Corp., which was founded in 2004 and services some of the exploration work at the Pebble deposit.
4. Alsworth owns Lake Clark Air, which often flies Pebble employees back and forth from Anchorage and around the surrounding areas.

2012 ADN Headline

5. The suit also alleges that Alsworth failed to disclose trips he made on Pebble's dime and failed to declare a conflict of interest regarding his company's charges to the borough school district to fly the school board to meetings.
6. "There's no conflict when there's not a direct tie," he said.
7. Attempts to try to stop the permits, such as the current lawsuit, soak up precious resources from a cash-strapped area and pit neighbor against neighbor.
8. "Where in Alaska's history have we seen something like what's happened here, where groups have gone to war against members of a community because they are neutral on a project?" Cotten said.

2015 Alaska Public Media Headline

North Slope Mayor Investigated for Corruption.

The North Slope Borough Assembly has voted to investigate allegations of ethics violations made against Mayor Charlotte Brower.

The Assembly's unanimous vote on Monday was made at Brower's request and comes after a disclosure by Brower that borough staff had procured goods from members of her family.

Brower wrote in a July 7 memo to Assembly members that the borough had allowed no-bid purchases from her family without her knowledge. Details of the purchases the borough paid for were not immediately known.

Brower was not available for comment Tuesday. In a written statement released to the media, Brower said she thought an investigation into the allegations would “promote transparency and accountability within the borough.”

2010 Huffington Post Headline

Joe Miller: 'I Lied' About Accessing Computers For Political Purposes.

Amid a political firestorm of controversy surrounding Alaska Senate candidate Joe Miller's ethics violations while working as a government attorney in 2008, new details emerged on Tuesday night revealing that the Republican hopeful himself admitted to lying about his complicity in the matter.

"I lied about accessing all of the computers," wrote Miller in an e-mail to Fairbanks North Star Borough attorney Rene Broker in March of 2008 in the wake of allegations he used the office technology for political purposes. "I then admitted about accessing the computers, but lied about what I was doing. Finally I admitted what I did."

The remarks from Miller came to light in a 60-page dispatch of records release (PDF) by the Alaska borough after a judge issued a court order for the files to be made public.

2012 Juneau Empire Headline

Kodiak assembly debates conflict of interest.

1. Assemblywoman has been providing consulting services on borough construction projects such as landfill expansion and a new long-term care facility.
2. “I thought an assembly member couldn’t work for the borough, but I was wrong,” Bonney said at a work session last week.
3. The Kodiak Daily Mirror reports that contracts of more than \$25,000 must be approved by the assembly. Lynch’s contracts were split into amounts less than \$25,000 – 11 purchase orders totaling \$38,625 with \$9,490 paid out so far.
4. Borough ordinance allows assembly members to be employed with contract work only.

2012 Juneau Empire Headline

5. Bonney said the ordinance should be re-examined and the \$25,000 threshold lowered.
6. “This is about the ordinance, the gaping hole in the ordinance that this didn’t have to go to bid,” Bonney said. “The ordinance needs to be changed so this can never happen again. I think we need to look at the \$25,000 limit and drop it to \$10,000 so at least we know what is going on.”
7. Lynch took on the work so the borough would not fall behind while seeking a project manager, she said.
8. Lynch recused herself at assembly meetings when there was a conflict, she said.

2012 Juneau Empire Headline

9. “It was vetted through the attorney,” Lynch said. “We were following the code. I’ve never considered anything we’ve done to be hiding something.”
10. “The majority of us typically elected into positions are business owners,” Austerman said. “If we’re going to move to change ordinances so assembly members’ businesses can no longer do business for the borough, I feel we’ll be limited to the people who are going to be able to run.”

❖ <http://www.baltimoresun.com/news/breaking/bs-md-ci-audit-singleton-20120228,0,1429221.story> (CIO Rico Singleton negotiated a job for his girlfriend and solicited a job for himself with a software vendor that was awarded a major contract).

❖ http://seattletimes.nwsourc.com/html/localnews/2016127222_ethics07m.html ("A city of Seattle employee drove a city car to Snoqualmie Casino during work hours, then rushed back to Seattle to attend an ethics seminar, according to an investigation by the city Ethics and Elections Commission.").

- ❖ <http://latimesblogs.latimes.com/california-politics/2012/08/ownard-officials-face-ethics-fines.html> (The mayor and city manager of Oxnard, California, are facing a combined \$34,000 in fines from the state ethics agency for failing to report gifts from a company doing business with the city).
- ❖ http://www.nj.com/news/index.ssf/2012/06/rahway_mayor_accused_of_ethics.html (Mayor Rick Proctor “tried to interfere in a civil service hiring process in which his wife was a candidate, going as far to suggest she be given a six-figure salary and the title of director.”).

“The reputation of a thousand years is determined by the conduct of one hour.”

Japanese proverb.

Higher Purpose of Law

1. To ensure that we act responsibly with our community's property and resources.
2. To ensure that a public agency's decision rests on nothing more than what best serves the public as a whole.
3. To ensure the public remains confident of equal treatment / access.

First Basic Rule: If it feels wrong or it looks wrong, ask for advice before you do it.

When in doubt --- ASK EARLY and OFTEN!

Second Basic Rule: Well meaning is not enough. You must be able to recognize and understand potential conflicts.

The law does not permit you to put yourself in a position that even exposes you to the temptation of acting in a way other than in the best interests of the public.

Third Basic Rule: Having a Conflict Isn't Wrong -
Failing to Disclose It However Is and May be
Criminal.

Fourth Basic Rule: Manage Conflicts Honestly and Responsibly.

1. Share all relevant facts.
2. If you have a conflict, STOP!



Stop talking - don't say or do anything to influence decision. Don't "infect" the other members.



Voting or any official action.



No matter how impartial you think you can be.

Legislative or Quasi-Judicial?

Legislative

Policy setting.

Applies to a wide class of individuals, interests or situations.

Quasi Judicial

Policy application.

Determines rights or duties of specific parties in a contested case. Usually a fact based decision where you choose between two distinct options.

Legislative / Policy Making Role



Basic Rule - Don't participate in or try to influence a decision impacting your financial interests

Spotting A Financial Interest

1. **Who** Does It Impact?

A. You.

B. Member of your household or dependent.

C. Customer/client or other economically connected individuals.

D. Group or organization of which you are an officer or director.

Spotting A Financial Interest

2. **What** does it impact?

A. Income.

B. Contract.

C. Real Property Interests (Own or Lease).

Would decision impact the income potential, allowable use, character of the neighborhood, or use/enjoyment of property owned by you?

D. Investment.

Spotting A Substantial Interest

3. **How** Does It Impact?

- A. Is my financial interest direct or indirect?
- B. Is my financial interest significant?
- C. Is it reasonably foreseeable that the decision will have a material effect on my finances?
- D. C. Will the decision have a different effect on my finances than the public at large?

Spotting A Substantial Interest

4. Exceptions.

A. Rule of Necessity (the rule of last resort)

B. Ministerial Act.

Quasi-Judicial Role



Ethics Ceiling - Judicial Conduct

Basic Rule - Be fair in actuality and appearance.

Basic Elements of Fairness

- ❖ No bias (hostility or favoritism).
You must be free of any strongly held bias against or in favor of a party.
- ❖ No Conflicts of Interest.
You must have no personal, or financial interest in the outcome - actual or apparent.

Basic Elements of Fairness

❖ No prejudice.

You must not have any strongly held or inalterable beliefs or notions relevant to the facts at issue.

– Decision overturned because councilmember told applicant he was “just wasting his time” talking.

❖ No ex parte (one-sided) communications or other considerations outside the record.

Decision based only on evidence in the record that both sides have seen/heard and given opportunity to respond.

Appearance Matters

You fail this test if it **merely appears** that you have engaged in self-dealing or it **merely looks** like you may have been influenced.

Is it reasonable for public to assume that it impacted your objectivity or independent judgment?

How to Participate in a Fair Hearing

- ❖ Know hearing procedures - establish in advance.
- ❖ Be aware of and disclose any situation that might cause someone to think that your decision is personally based, not evidence based.
- ❖ Avoid ex parte communications, but if they occur, get the information in the record.
- ❖ Preserve an atmosphere of fairness, even if you think the result is obvious.
- ❖ Pay attention - one who judges must first hear.

Other Ethical Hot Spots

1. Incompatible Offices.
Do I hold another office or position that subjects me to conflicting loyalties or duties?
2. Confidentiality.
3. Cooling-Off Period / Revolving Door.
4. Nepotism.
5. Transactions with subordinates.

Other Ethical Hot Spots

6. Complicity or knowledge of other's misdeeds.
7. Misuse of Office.
8. Business Relationship with Municipality.
9. Preferential Treatment.
10. Gifts.
11. Use of Public Resources.
12. Volunteers.

Question:

A colleague recently traveled with me to a conference in Washington D.C. fully paid for by our local government. I didn't see him at any of the educational sessions. Should I report him to the ethics board?

Question:

We only have 4 miles of road in our city and for years the maintenance of the roads has been horrible. After I was elected I called the Public Works Director and I told him these problems have to be addressed *immediately*. After all, my business is on one of these roads and it is costing me business and money. He kept insisting that I should talk to the City Manager, who is his boss. This is exactly why nothing ever gets done in my city because employees always want to push their work to someone else.

Question:

One council member works for an airline who is one of the biggest users of the city airport. Another serves on the airline's board as the Treasurer. The Council is currently deciding whether they should raise all airport fees.

Does the council member who is an employee have a conflict?

Does the council member who is a board member have a conflict?

Would it make a difference if the board member is an *ex-officio* member appointed by the City Council to serve as a liaison?

Question:

Council Member Joe owns one of thirteen lots owned by nine different property-owners on a street that the City is considering significantly upgrading in order to draw more commercial business to the area. Joe uses his lot, however, for residential, not commercial, purposes. Although Joe does not intend to sell his home or convert it to commercial purposes he believes that the street upgrade probably would increase the value of his property. Joe voted on the upgrade which passed 5 to 1.

Should Joe have voted?

Would it have been better had Joe only participated in the discussion and debate but not voted?

If Joe shouldn't have voted is the ordinance automatically void? Does it matter in this regard that all the other council members were aware of Joe's property ownership?

Final Words: It Can Happen to You!

Don't acquire a sense of entitlement. You get your paycheck and personal satisfaction.

“Many people convince themselves if it is economically necessary, it's morally right.” *

A public servant's role often means sacrificing personal opportunities.