

ETHICS AND CONFLICT OF INTEREST



A HANDBOOK FOR MUNICIPAL OFFICIALS

If the law tells you what you should not do,
ethics tells you what you should do, and
morals tell you what to aspire to do.

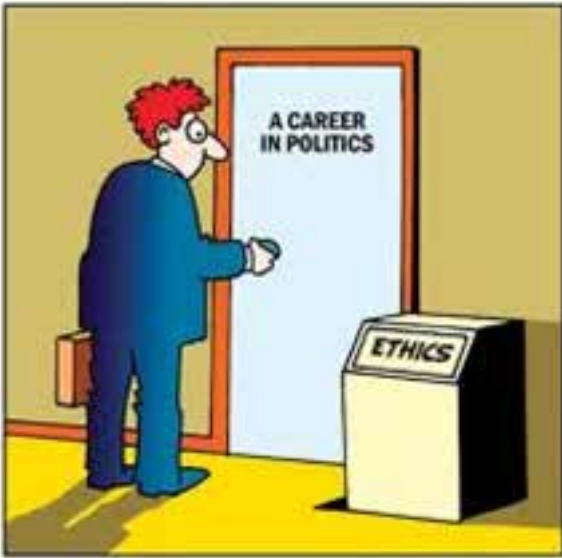
WYOMING ASSOCIATION OF MUNICIPALITIES
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“Government is a trust, and the officers of the government are trustees; and both the trust and trustees are created for the benefit of the people.”

—Henry Clay—

This brochure was compiled by the Leadership Training Services Board under contract with Community Builders, Inc., a Wyoming-based consulting firm.

– Bobbe Fitzhugh and Joe Coyne, principals – www.consultCBI.com



In order for government to be effective in a free society there must be a foundation of trust. No city council can function well without the consent and trust of those being governed. Municipal officials are agents of public purpose and hold office for the benefit of the public. It is therefore critically important that local government officials conduct themselves in keeping with high standards. What is the ethical conduct that is expected of municipal officials? What constitutes a prohibited conflict of interest and how should a city council handle potential conflict situations?

This handbook was developed to provide local government officials with a framework for examining ethics in local government, to improve officials' own ethical judgments, and to minimize the risk of conflict of interest. Public

officials are encouraged to consult legal counsel, their own municipal codes and personnel policies for specific rules and regulations concerning ethics and conflict of interest.

Ethics is the development of standards of human conduct. Every culture has developed an ethic of its own. The moral regulation of behavior has been necessary for as long as people live together in groups. High ethical standards are critical to a local government's credibility with the public. Although it is impossible to legislate ethical conduct, there are many ways that an organization can encourage and nurture ethical values.

What is Ethics?

- Standards of human conduct
- Choices and use of discretion
- Applying the right values to achieve the right outcome
- The practice of applying a code of conduct to day-to-day actions

Characteristics of an Ethical Organization

- Sense of responsibility toward community as a whole
- High standards in quality of work performed
- Everyone treated with honesty and respect
- Frequent, open, honest, communication
- Deep regard for fairness
- Reflection of honesty and integrity
- Belief in democratic process



An ethical municipality carries a sense of responsibility to its community from top to bottom. At every level, workers are committed to delivering high quality services. Even the regular complainers are treated with respect, and honesty forms the basis of all communication. What's best for the community is what is fair to all, not just a few. The entire governing process reflects a high level of honesty and integrity because, at its root, local government is the best representation of democracy we have in this country.

How Does a Municipality Establish Standards?

- Doing what is “legal” is the minimal standard. It provides the outer boundaries of conduct – what you can and can't do.
- Setting ethical behavior standards for everyone who works in the organization
- Moral is guided by personal principles, values and virtues. This is the highest personal standard.
- There is a difference between legal and ethical. If an attorney says it's okay, it could still be unethical.

What is a Conflict of Interest?

A conflict of interest is a set of circumstances that creates a risk that your professional judgment or actions regarding the greater good will be unduly influenced by what you stand to gain from a decision.

You experience an obvious **financial** conflict of interest if you own a towing company and ask that the Police Department refer accident victims to your company first.

A **professional** conflict of interest occurs if the city administrator provides paid consulting services on the weekend to another level of government.

An example of a **personal** conflict of interest would be dating an employee who reports to you.

If the city attorney represents the city as a prosecutor with a plaintiff he represented in another case as a defendant, he experiences a **prejudicial** conflict of interest.





What are the Laws and Regulations About Ethics and Conflict of Interest?

Ethics and conflict of interest regulations are found in:

- State Statutes
- Local Ordinances
- Policies and Procedures
- Professional Codes of Conduct

In Wyoming, ethics and conflict of interest provisions for government officials is subject to state statutory provisions. In addition, many municipal organizations have adopted specific ordinances or policies regulating the behavior of its local officials. Various professional organizations also have professional codes of conduct that members are obliged to adhere to.

Because state statutes may not cover all of your employees in all ethic areas, it's a good idea to adopt similar policy language to cover employees on many of the statutory provisions.

What Does the Law Say?

Statutory provisions are scattered throughout Wyoming State Statutes and it is important to understand that not all provisions apply to all local elected and appointed officials.

WSS 6-5-101 through 6-5-118 - Offenses by Public Officials. Applies to local elected and appointed officials and employees. Some of the relevant topics covered:

- Bribery
- Accepting or soliciting compensation for favorable vote
- Conflict of interest
- Official misconduct
- Wrongful appropriation of public property
- Financial disclosure

WSS 9-13-1 through 9-13-109 - Ethics and Disclosure Act. These provisions apply only to mayors and council members and **NOT** employees. Areas covered include:

- Use of title and prestige of office
- Nepotism
- Misuse of office
- Official decisions and votes

WSS 15-1-128 - Gratuities. This section applies to elected officials and employees of any municipality.

WSS 16-6-118 includes provisions relating to unlawful interest in public contracts by elected or appointed officials.

Ethics and Disclosure Act WSS 9-13-101, et seq. and WSS 15-1-128

Remember - Title 9 applies only to the locally elected governing body (as well as state elected and appointed officials). However, the provisions concerning gratuities in Title 15 apply to elected officials and employees of the municipality.

Use of title and prestige of office (9-13-103)

Cannot use office or position for private benefit. Cannot provide any privilege beyond that which is available to every other person or business.

Example - If the Mayor is pulled over by the police and flashes her Mayoral credentials in an effort to get out of the ticket, this is a violation of the law.

Gifts and Gratuities (WSS 9-13-103) and (WSS 15-1-128)

Remember that Title 9 applies only to elected local government officials. However, Title 15 also covers receipt of gifts by municipal employees. And, Title 6 excludes property with a value less than \$20 or IRS limited food, drink or entertainment.

A “gift” is the act of giving money or a favor to an individual in a position of trust to influence his or her judgment or conduct. Basically, this means anything of value for the private benefit of the official.

Anything of value – money, contract, promise for loan, advance, forgiveness of debt, work of art,



automobile, property, honorarium, promise of employment.

Anything of value (as defined previously) received from any of the following will typically be prohibited:

- a person seeking to obtain a contract, grant, loan, employment, or any financial relationship from or within the city.
- a person or business having a financial relationship with the city.
- a person or business whose operations or activities are regulated or inspected by the city.
- a principal and/or attorney in proceedings in which the city is an adverse party.
- any person or business where the performance or nonperformance of any official duty may be affected or influenced.

“Gift” excludes:

- Printed, informational, educational or promotional material.
- A gift that is not used and is returned to the donor or given to charity within 30 days.
- Food and beverage
- Travel, registration, lodging, per diem (The cost of attending conventions must be specifically included in the municipal budget.)
- Small tokens or favors given to everyone attending a function or celebrating an occasion
- Acceptance of award for meritorious achievement from a charitable, religious, professional, social, or civic organization
- Acceptance of gift from family member or close personal friend, where circumstances make it clear that the motivation for the gift is the family relationship, or traditional practices



among close friends such as exchange of birthday and Christmas gifts.

- Acceptance of plaque or memento of nominal value offered as a token of esteem or appreciation
- Gift given for special occasions (retirement, marriage, etc.)
- Legal political contribution made to, and reported by, a duly registered campaign committee

REMEMBER - Wyoming State Statute 15-1-128 applies to mayor, council members **and employees** of the municipality.

- May not solicit or receive any pay, commission, money or thing of value, or derive any benefit, profit or advantage from any improvement, alteration or repair or any contract to which the municipality is a party, except lawful compensation as an officer or employee.
- May not solicit or accept any pass, free ticket, free service or other favor upon terms more favorable than the public's, from any public service corporation or public utility. (No lobbying or gifts given to municipal officials.)

Examples of some prohibited gifts or entertainment:

- *Tickets to a Rockies baseball game given by the Town's insurance carrier.*
- *Free city water for all volunteer firefighters.*
- *Use of city Xerox machine to print employee annual private Christmas letters.*

It is a thin line that divides the giving of a small gift or favor from bribery - the act of giving money or a favor to an individual in a position of trust to influence his or her judgment or conduct. It causes resentment which can undermine trust and confidence of public.



Nepotism (WSS 9-13-104)

- Cannot advocate or cause the employment, appointment, promotion or advancement of a family member (spouse, parent, sibling, child, grandparent or grandchild)
- Cannot supervise or manage a family member
- Absolute prohibitions – extremely broad

Absent a charter ordinance establishing a city or town administrator who supervises employees, the Town Clerk cannot be the Mayor's wife (or brother, or granddaughter). Because this statute applies only to elected officials, unless you have a municipal policy regulating nepotism, it is legal (but perhaps not ethical), for the Chief of Police to promote his sister to the rank of Sergeant, a position directly supervised by the Chief.

Misuse of office (WSS 9-13-105)

Use of Public Property - Cannot use public funds, time, personnel, facilities or equipment for private benefit or that of another unless the use is authorized by law.

Example – calling public works to fix the pothole in front of your house first or using the shop wash bay to wash your personal car. Why? Because the general public does not have the same opportunity.

Confidential Information - Cannot disseminate official information which is obtained through or in connection with his position, unless the information is available to the general public or unless authorized by law.

Example - sharing discussion from a Council executive session with the coffee klatch.

Official decisions and votes (WSS 9-13-106)

- Cannot make an official decision or vote if there is a personal or private interest in the matter.
- Must abstain from voting only in clear cases of personal or private interest - weight against importance of his or her right to represent his or her constituency.

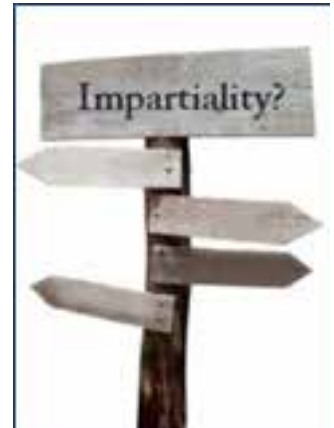
Example - general rezoning of property in the same neighborhood the councilman lives vs. developing the subdivision himself.

- Shall not vote or give money or any direct financial benefit to himself except for tax reductions affecting the general public.
 - Direct and immediate interest as opposed to speculative or remote
 - Interest provides a greater benefit or lesser detriment than for large group similarly situated
 - Official's abstention must be recorded in minutes and he/she should step down from dais during discussion and vote.

Example - Councilman Smith is a car dealer and the Police Department presents a bid for five new patrol cars to be awarded to the company - should abstain and declare conflict of interest.

Prohibitions from interests in contracts (WSS Section 15-1-127) and (16-6-118)

- WSS 16-6-118 makes it unlawful for any person holding office, either by election or appointment, to become interested, either directly or indirectly, in any contract in which he may be called upon to act or vote.
- No public official can offer to take or receive any money or thing of value, as a gift or bribe, or means of influencing his vote or action in his official capacity.
- If a public official discloses interest and actually leaves during the considerations and vote, and he does not otherwise attempt to influence the vote, he does not violate law. That contract can be let to the official or his company.



Here's another area of Wyoming statutory authority relating to public contracts and conflict of interest. These provisions are found in WSS 15-1-127 (Cities and Towns):

Applies to mayors and council members and immediate family

- Cannot receive any monetary or other economic benefit from any contract to which the municipality is a party
- Contract is void if there is no compliance with this statute
- Exception (not a conflict of interest if):
 - No participation in consideration or discussion of contract
 - No attempt to influence in any way
 - Must reveal the nature and extent of any monetary or other economic benefit

- Shall not vote
- Shall absent himself during consideration, discussion and vote on the contract
- Shall not act, directly or indirectly, for the municipality in inspection, operation, administration of contract

Remember: The general public has a right to know if a public official is furthering his or her own financial interests by voting a particular way.

Financial Disclosure (WSS 6-5-118) – Financial Disclosure Provisions

- Public officers or public servants who invest funds for unit of government, or who have authority to decide how public funds are invested must disclose benefit or interest in entity.
- Disclosures shall be made annually in a public meeting and shall be made part of the record of proceedings.
- Should not participate in any discussions that might affect your investment, even if you refrain from voting.

Violations; Penalties

Violations to state ethics laws vary by the statute violated.

- Title 9 - Misdemeanors with fine not more than \$1,000 and for sufficient cause can lead to removal from office
- Title 15 – Subject to removal from position or other disciplinary action
- Title 6 – Felony – up to 10 years in prison and/or fine up to \$5000

But the threat of legal action should not be your only guide in determining proper behavior!

The “Appearance” Test

How comfortable would you be if a newspaper article described the situation and your role in it on the front page of the newspaper?

The public interest is best served by engaged representatives who are knowledgeable about their community. When their private lives intersect with their public duties, what steps should they take to ensure that they act in the best interests of the public they serve and in a manner that promotes confidence in their actions?

If you find yourself in a similar situation, first discern whether



there is any connection between an official action you are about to take and your personal life. Seek counsel to have a clear understanding of your legal obligation. If your participation meets the legal test, consider next whether it will meet the appearance test.

Disclose any personal relationship in any instance where there could be the appearance of a conflict of interest. If the conflict is significant enough that a reasonable person would question whether you are acting in the public’s best interest, consider disengaging from the process early on. After all, disclosure doesn’t cure all conflicts of interest.

When faced with a conflict of interest, remember the 3-D strategy: discern, disclose, disengage.

**Ethics is not about obeying laws and rules.
Ethics is about doing what is right.**

“Climb if you will, but remember that courage and strength are naught without prudence. And that a momentary negligence may destroy the happiness of a lifetime.”

The Athenian Oath

We will never bring disgrace to this our city
by any act of dishonesty or cowardice,
Nor ever desert our suffering comrades in the ranks;

We fight for the ideals and the sacred things of the city,
both alone and with many;

We will revere and obey the city’s laws and
do our best to incite to a like respect and reverence for
those who are prone to annul or set them at naught;

We will strive unceasingly to quicken
the public sense of public duty;

That thus, in all these ways, we will transmit this city not only not less, but
greater, better and more beautiful than it was transmitted to us.

Notes



Wyoming Association
of Municipalities

Building Strong Communities

Wyoming Association of Municipalities
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