

Ethics and Public Purpose Doctrine for Public Entities

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Today's Topics

- Ethics for public entities
 - Public sector ethics
 - Conflicts of interest and appearance of impropriety
 - Creating a culture of ethics
- Public purpose doctrine for public entities
 - Authority for expenditure
 - Purpose for expenditure



What Does "Ethics" Mean?

- Discipline of dealing with what is good and bad, with moral duty and obligation
- Principle of conduct governing an individual or group
(Webster's Ninth New Collegiate Dictionary)
- Way people behave based on how their beliefs about what is right and wrong influence behavior (*Ethics.org*)

Additional Ethics Perspectives

“There is never a right time to do the wrong thing, and, there is never a wrong time to do the right thing.”

– Eric Nerness, MCIT Director of Claims

“Would you feel proud of what was done if you read about it in the newspaper?”

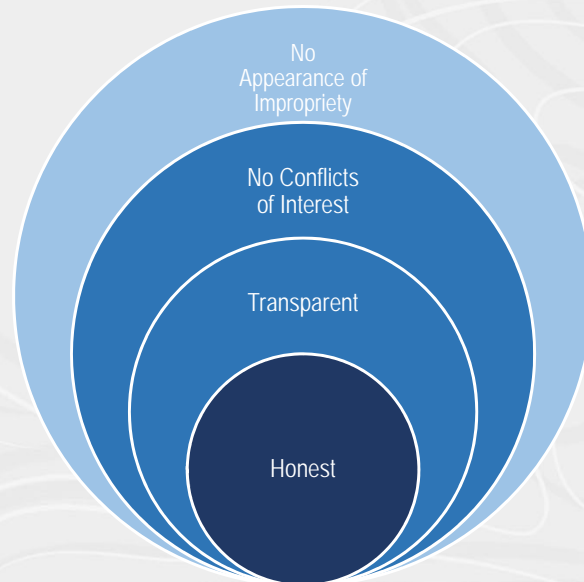
– June Nerness, Eric's Mom



Public Entity Ethics

Public-sector Ethics

- Stewards for:
 - Public
 - Public funds
- Do not advance personal private interests



Laws to Advance Ethical Behavior

- Conflict of interest laws: Decisions for public interest
- Anti-bribery statutes: Honesty
- Open meeting laws: Transparency
- Data practice laws:
 - Transparency
 - Preclude using data for personal advantage
- Laws prohibiting acceptance of gifts: Preclude favoritism

Code of Ethics

Written Code of Ethics

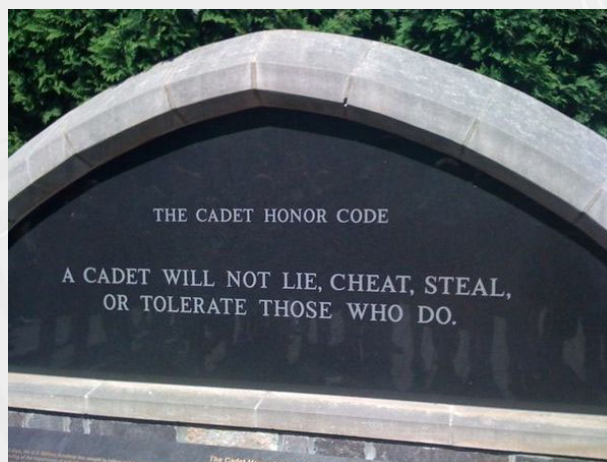


- Easily understandable
- Acknowledged by officials and employees
- Owner is needed
 - Ethics facilitator or ethics committee?
- Process to report suspected violations
- Clearly state consequences for violations

Code of Ethics Considerations

- Advance the public interest
- Uphold the Constitution and the law
- Promote democratic participation
- Reduce injustice and inequality
- Fully inform and advise
- Demonstrate personal integrity
- Promote ethical organizations
- Advance professional excellence

Code of Ethics Example U.S. MILITARY ACADEMY AT WEST POINT



Conflict of Interest

Conflict of Interest

- Who:
 - County official; or his/her deputy, clerk or employee
 - Commissioner for tax-forfeited land, his/her assistants
- What:
 - Directly or indirectly interested in any contract, work, labor or business to which the county is a party
 - Expense payable from the county treasury

Minn. Stat. §382.18

Statutory Exception(s) to Conflict of Interest

- Reimbursement from a county for providing licensed or tribally approved family foster care
- Violations shall be a gross misdemeanor

Minn. Stat. §382.18



Additional Prohibition for Authorized Person



Cannot have voluntary personal financial interest

- In any sale, lease or contract
- Except as specified by statute

Minn. Stat. §471.87

Exceptions to Statute

- Covers governing bodies of
 - Port authorities
 - Watershed and soil and water conservation districts
 - Hospital district, county
 - 19 exceptions enumerated
- Violations are gross misdemeanors



Minn. Stat. §471.88

Other Exceptions

Sale of Public Property to Employees

- Limited to employees
- Public notice, auction or sealed bids

Minn. Stat. §15.054

Competitive Bids Not Required

- Board resolution
- Affidavit from vendor

Minn. Stat. §471.88, subs. 1 and 5

Considerations



- County officials may not accept gifts, with limited exceptions

Minn. Stat. §479.895, 10A.071

- County employees may purchase from county if held for sale to the public

Minn. Stat. §471.88, subs. 1 and 5

Conflict of Interest Case Law

- Each situation examined independently
- Court considers 4 factors

Type of
Decision

Type of
Financial
Interest

Number of
Officials
Making
Decision

Whether
Official Is
Needed for
Decision

Conflict of Interest Case Law Examples

- Lenz v. Coon Creek Watershed Dist., 278 Minn. 1, 15, 153 N.W.2d 209, 219 (1967)
- Nolan v. City of Eden Prairie, 610 N.W.2d 697 (Minn. App. 2000)

Appearance of Impropriety

Public Purpose Doctrine

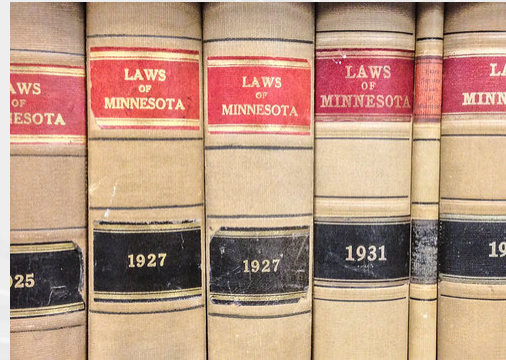
Public Purpose Doctrine

- Public entities have limited authority to give away public funds as donations or gifts
- Public entities must have:
 - Authority to expend the public funds
 - Public purpose for the expenditure



Does Statute Provide Authority to Make the Expenditure?

- May be specifically conferred by statute or charter
- May be implied as being necessary to accomplish what an express power authorizes



Worthwhile Expense May Not be Authorized

Public funds cannot be expended, even for a desirable or commendable purpose, if there is no statutory or charter authority to do so.

Op. Att'y Gen. 59a-22 (Dec. 4, 1934)

What Is the Public Purpose for the Expenditure?

- Public purpose defined as:
 - Activity serves a benefit to community as a whole and is directly related to the functions of government.*
- Expenditure that primarily benefits a private interest is unlawful even if it incidentally serves a public purpose

*Visina v. Freeman, 252 Minn. 177, 184, 89 N.W.2d 635, 644 (1958)



Specific Statutory Authorizations

- Municipalities may give grants to nonprofits operating community food shelves (§465.039)
- Municipalities may appropriate money to support a public or private not-for-profit senior citizen center or youth center (§471.935)
- Municipalities are authorized to appropriate funds to support “artistic organizations” (§471.941)



Funds to Private Entities

- Minnesota State Auditor: Gift of public funds to private entity is assumed to be for private purpose
- Authority to appropriate funds to participate in meetings and activities may not automatically extend to gifts or donations



Wellness and Recognition Programs

- Minn. Stat. §15.46 gives specific authority for a program:
 - Preventive health
 - Employee recognition
 - Provide staff, equipment, facilities
 - Expend funds to achieve objectives of program



Develop Programs Appropriately

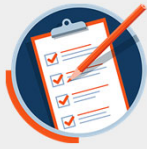


- Properly established programs should:
 - Be in writing
 - Be approved by county board
 - Include clear wellness and recognition objectives
- County board must determine what amounts can be expended “as necessary to achieve the objectives of the program.”

Expend Funds Only to Achieve Objectives

- Cannot simply provide employee banquets or parties for all employees
- Funds used only as necessary to achieve objectives of the program
- Cannot pay for spouses or third parties to attend event
- Cannot use public funds to purchase alcohol





Key Takeaways

- Adopt a code of ethics
 - Create a culture of ethics
- Avoid conflicts of interest/appearance of impropriety
 - Transparency builds trust
- When considering expenditures
 - Authorized?
 - Public purpose?
 - Objective focused?



Resources at [MCIT.org/resource/](https://www.mcit.org/resource/)

- “Elected Officials: Take Care to Act Ethically, Manage Conflicts of Interest”
- “Public Purpose Doctrine Applies to Gifts, Donations from Public Entities”
- “A Primer on Bonds”



Additional Resources

- State of Minnesota, Office of the State Auditor
 - Statement of Position, Public Expenditures: Donations and Dues
 - Training and Guidance
 - FAQs by topic
 - Avoiding pitfalls
- American Society for Public Administration

Join Us for Another Workshop
Register at MCIT.org/training-calendar/

**Managing Performance with
Positive Communication:**
Nov. 16 at 1:30 p.m.



DISCUSSION

ASK QUESTIONS, SHARE EXPERIENCES



THANK YOU!

Please complete the online evaluation