

Ethics & Local Government

City of Red Wing, July 31, 2018
Presenter: Pam Whitmore

Tricky

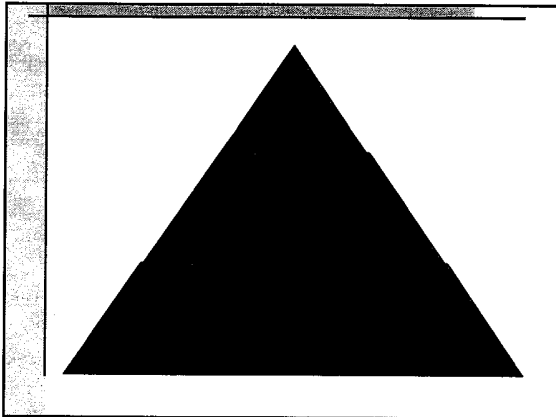
Ethics is knowing the difference between what you have a right to do and what is right to do.

—Stewart Potter, Associate Justice of the Supreme Court of the United States (October 14, 1958 – July 3, 1981)

However, for public officials, sometimes what is right to do is impacted by statutes which limits what you can do.

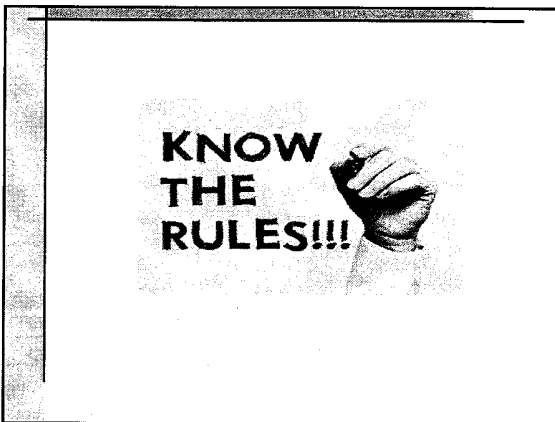
Agenda

- **Guiding Principles – basis of ethics (Phil)**
 - Attitudes
 - Dedication
 - Professional Responsibility
 - Respectful Communication
 - Management Techniques
- **Additional Statutory Ethics for Public Officials**
 - Conflicts
 - Gifts
 - Incompatible Offices
 - Open Meeting Law
 - Data
- **How Cities Enforce Ethics**



**Red Wing Code of Ethics
Standards of Conduct**

- Re-iterates statutory limitations
 - OML
 - Data Practices
 - Gift Law
 - Conflict of Interest
- Additional Ethos
 - Not to use position or knowledge for personal gain (can fall within realm of Conflict of Interest)
- Consequences
 - Censure
 - Referral for prosecution
 - Request no participation in vote or remove from appointed position



Open Meeting Law

- Purpose:
 - Prohibit secret meetings
 - Allow interested public to be fully informed
 - Public given an opportunity to observe and to detect improper influences
- Meeting = Quorum or More of Decision Makers
- Discussion, Decision or Receipt of Information on Issues Related to Official City Business

Open Meeting Law & Ethics

- Sometimes it is hard to be efficient with OML but public officials must respect the intent and the law
- Avoid before and after meetings
- Avoid serial communications – meetings or email or texts
- Do not Reply All

Closed Meetings

- Cannot close “just because”
- Same notice as open meetings
- Must have a statutory reason to close
- Before closing: state specific grounds permitting closure & describe subject to be discussed (presiding officer)
- Remember “Attorney-Client Privilege” reason to close is VERY limited
- Remember “Performance Review” requires notification to employee and providing them opportunity to open

OML Penalties

- Civil
- Possible Removal – 3 separate adjudications of intentional violations
- Litigation costs – attorneys fees

Data

- Government data are public unless federal law, state law, or temporary classification say otherwise.
- Presumption reversed for personnel data
- Statutes classifies types of data that are not public
- Statutes provide rights for the public and data subjects
- Can be confusing: public, non-public, confidential.

Classification of Government Data

Classification	Meaning of classification	Examples
Public	Available to anyone for any reason	Employee name & salary
Private/ Nonpublic	Available to: <ul style="list-style-type: none"> • Data subject • Those in the entity whose work assignment requires access • Entities authorized by law • Those authorized by data subject 	Employee home address & home phone number
Confident ial/Protec ted nonpublic	Available to: <ul style="list-style-type: none"> • Those in the entity whose work assignment requires access • Entities authorized by law Not available to the data subject	Data collected as part of an active civil legal action

Data & Ethics

- No employee or elected official should request confidential information, unless it is necessary to do one's job.
- When a councilmember receives information that may be considered confidential, the councilmember should ask the responsible authority whether the information is publicly available.
- If the information is not publicly available, a councilmember must not disclose the information to the public or to other councilmembers (unless within scope of their duties to know it).
- As a general rule, you should not discuss specific names or facts unless required.

Quick Test

- Name of a finalist for a staff position?
- Identity of person making a complaint about someone's property?
- How much city would sell property for?
- Disciplinary Data?

Data Penalties

- Civil
- Criminal
- Administrative
- Protection from penalties if act in compliance with advisory opinion

Gifts

- An “elected or appointed” city official may not generally receive a gift from an “interested person.”
- "Interested person" means a person or a representative of a person or association that has a direct financial interest in a decision that a local official is authorized to make.

Gifts

A “gift” is defined as money, property (real or personal), a service, a loan, the forbearance or forgiveness of debt, or a promise of future employment, given and received without the giver receiving something of equal or greater value in return.

Gifts

Exception (LOOPHOLES) - NOT GIFTS

- Lawful campaign contributions
- Services of insignificant monetary value
- A plaque, trinket, or memento worth \$5 or less
- Food or beverage given at a reception, meal, or meeting by an organization where the recipient is to make a speech or answer questions as part of a program
- Gifts between family members, unless the gift is given on behalf of someone who is not a member of the family

Gifts & Ethics

Example:

Councilmember goes to city hall and asks staff if anyone wants to donate \$10 to local schools band trip where their child goes?

Contractual Conflict of Interest

- Public officers are generally prohibited from having a personal financial interest in a sale, lease or contract they are authorized to make in their official capacity.
- No direct or indirect interest.
- Check Charter.
- Statutory Exceptions may apply.

Conflicts & Ethics

- The mayor's husband runs the local hardware store and the city wants to contract with this hardware store for its needs. Is there a conflict?
- A zoning action arises that would impact a councilmember's property
- Legal debate v. Ethos debate

Compatibility of Offices

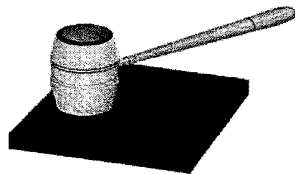
Generally incompatible when:

- A specific statute or charter provision:
 - States that one person may not hold two or more specific positions.
 - Requires that the officer may not take another position.
 - Requires that the office devote to the position full-time.
- Hires or appoints the other.
- Sets the salary for the other.
- Performs functions that are inconsistent with the other, for example, a person cannot supervise or evaluate himself or herself.
- Approves the official or fidelity bond of the other.

Compatibility & Ethics

Can a councilmember, who is also a paid on-call firefighter, vote on fire chief's salary? What about fire department budget?

Enforcement



**Ethics Committees:
Common in Cities?**

No, not common.

- 853 cities in Minnesota
- 107 of those cities are Charter Cities
- 3 cities have ethics committees that I could find

Confirmed cities from my research:

- Rochester (Charter) - Ethical Practices Board
- Minneapolis (Charter) - Ethical Practices Board
- Roseville - Ethics Commission
- Brooklyn Park (Charter) - No Board but Formal Process for Complaint

Minneapolis

- City Ethics Code
- Ethical Practices Board - facilitates the formal complaints regarding the Ethics Code, and writes Binding Advisory Opinions on its own initiative or when requested.
- If the Board finds an Ethics Code violation after a formal hearing process, the Board reports the findings to the mayor, the ways and means/budget committee, city council, and the department head with recommendations of discipline for the violation.
- Employees (not elected officials) - "an appointed or classified employee who violates the code of ethics may be subject to disciplinary action, up to and including termination of city employment."

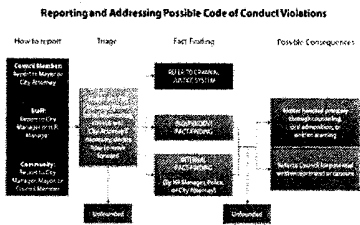
Rochester

- Formed via city ordinance in December 2008.
- Seven citizen members appointed by a committee consisting of the President of Rochester Community and Technical College, the Chancellor of the University of Minnesota Rochester and the highest ranking officer of the Olmsted County Bar Association not associated with the Rochester City Attorney's Office.
- Similar duties to Minneapolis re: investigations, make recommendations (to city administrator and appointing authority) and issue advisory opinions
- Additional duties for assisting HR in training
- Violations can result in discipline or (for employees) termination based on charter authority (not done by board but by city)

Roseville

- Ethics Commission which includes a representative from each of the standing commissions.
- Serve in an advisory capacity to the city council on matters involving the ethics code adopted by the city council.
- Administer the ethics code adopted by the city council.
- Conduct annual ethics training for city council and commission members.
- Perform other duties and functions or conduct studies as specifically directed or delegated by the city council.

Brooklyn Park



Ethics Committees

- What is your overall goal?
- What do you want an ethics commission to do? What can it do?
- How would commission members be selected? What powers would the commission have?
- What resources are available to support the commission?
- What decision-making process should you use to determine whether a commission is right for the community?
- Chilling effect on candidates?
- Any real enforcement anyway? Time/resources it would take?

Effective?

- No removal of Elected Officials - no teeth, no removal
- Censure - can do without a Committee
- Reprimand - can do without a Committee
- Take away appointments - can do without a Committee (check charter, if silent on appointment, then statutes give that authority to mayors)
- Credibility with Public
- Evaluate Resources for Support

Other Resources

- League of Minnesota Cities Research Department
 - Pam Whitmore, 651-281-1224
 - research@lmc.org, 651-281-1200
 - Conflict of Interest Memo
- City Attorney

