

Can I do this? Ethics Essentials for Local Government Officials

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David Schultz
Hamline University
651.523.2858
dschultz@hamline.edu

Summary: Serving your government is an important honor and duty. Yet government service on a board or commission, whether paid or not, brings with it important ethical and legal issues that you should recognize. This class highlights several important points that you need to know.

Goals

- * Examine the role of the board member/elected official versus the role of staff
- * Discuss the importance of open meeting laws
- * Review data privacy and public information laws
- * Identify what is a conflict of interest and how to address them

I. Introduction

- A. Our roll as public servants?
- B. Who is it we serve? Our relationship with the public?
 - 1. The contrasting roles
 - a. Citizen
 - b. Customer
 - c. Partner
- C. How do these different roles dictate or guide interaction with them?
- D. How are public sector values different from the private and non-profit sector?
 - 1. Can or should public sector managers be more market-orientated?
- E. Identifying public sector values
 - 1. What is unique about the public sector?
 - a. James Q. Wilson's *Bureaucracy*
 - (1) Private managers
 - (a) drive by goals and tasks and the Bottom line
 - (2) Public managers
 - (a) driven by constraints and the Top line
 - (3) Role of financial incentives for public v. private managers
 - (a) Private managers used retained earnings to acquire capital
 - (b) Public managers seek legislative appropriation
 - (4) Consequences of constraints on public managers
 - (a) More incentive to worry about constraints
 - (b) Power of public interveners enhanced
 - (c) Equity over efficiency

- (d) Increased risk-aversion
 - (e) Rules created to prevent violation of constraints
 - (f) More managers needed to address constraints
 - (g) Discretionary authority is pushed upward
 - (h) People and performance: Securing Compliance
- F. What values uniquely influence the public sector?
- 1. U.S. Constitution and the Bill of Rights
 - 2. State Constitution and laws
 - 3. Red Wing Laws
 - 4. The Public Interest
 - a. What does the public interest mean?
- G. A Constitutional Ethic of Public Service
- 1. What are the different components of an ethics for public service?
 - a. Sheila Kennedy and David Schultz, *American Public Service: Constitutional and Ethical Foundations* (Jones and Bartlett, June 1010).
 - (1) Follow the Constitution and respect rights
 - (2) Serve the public interest
 - (3) maintain neutrality
 - (4) Serve the public good
 - (5) Openness
 - (6) Accountability
- H. How to be a good public official
- 1. Trustee for the people
 - 2. Follow the law; but simply following the law is not enough
 - 3. Act ethically
 - 4. Appearances matter

II. Boards, Committees, and Governance

- A. What factors make for an effective Board?
- 1. What about for an effective Board member? If you had to list to attributes and traits of a good board member, what would they be? Is it the same for all boards, or does it vary with the organization?
- B. Basic duties
- 1. Care
 - a. Direct and protect
 - b. Do your homework!
 - 2. Loyalty
 - a. No bad-mouthing or self dealing
 - 3. Obedience
 - a. Follow the rules
- C. Board v staff
- 1. Making general policy or recommendations
 - 2. Understanding boundaries

III. Minnesota Open Meeting Law

- A. Presumption under state law is that all public meetings are open to the public and with notice.
- B. Public meeting is any body that conducts business or functions for the public benefit
- C. Public meetings include any gathering or situation where members of a body gather or conduct business (includes telephone, Internet, social media).
- D. Conducting business includes:
 - 1. Arriving at a decision
 - 2. Informational meetings
 - 3. Discussing public issues
- E. Public meetings can include serial meetings where you call another member to conduct business or discuss a matter as part of a process at arriving at a decision or take action.
 - 1. Public meeting does not include chance or social gatherings
 - a. But if you do meet at a coffee shop by chance, do not seek to have a discussion where you conduct business or arrive at a decision.
- F. Narrow exceptions to public meeting requirement (when it can be closed)
 - 1. Labor negotiations
 - 2. Employee evaluations
 - 3. Labor negotiations
 - 4. Security issues
 - 5. Property transactions
 - 6. Limited attorney-client privilege
- G. Always consult with city attorney before considering closing a meeting
- H. When in doubt, ask city attorney

IV. Public Information and Data Practices

- A. Minnesota Data Practices Act presumes all information held by the government or conducted by the government is public unless specifically designated as not.
 - 1. The public has a general right to know and examine public documents.
- B. Emails may constitute public information if coming to/from a city email account.
- C. You cannot use private email to escape Data Practices Act if you are conducting city business.

V. Conflict of Interest?

- A. Classic definitions
 - 1. Abuse of official position for personal financial advantage (pecuniary advantage)
 - 2. Abuse of information
 - 3. Special privileges
 - 4. Personal and work life come into conflict

VI. Types of Conflict of Interest

- A. Actual v. potential conflicts
- B. Personal v. impersonal conflicts

1. You represent two conflicting interests
2. My interest conflicts with another
- C. Individual v. organizational conflict
 1. Organizations having interests in another
 - a. Auditors holding stock in clients they audit
- D. Five kinds of conflict of interest
 1. Biased judgment
 2. Direct competition
 3. Misuse of position
 4. Violation of confidentiality
 5. Gifts (see below)

VII. Changing Notions of Conflict of Interest

- A. The expansion of the conflict of interest
- B. Conflicts of responsibility
 1. Role conflicts?
 2. Personal, professional, and public roles?
- C. New Issues
 1. Is it only financial?
 2. Is it only legalistic?
 3. Is it appearance?
 4. Is it ideology?
 5. Can conflicts be conflicting loyalties?
 - a. Self, citizen, family?
 - b. Religion?
- D. The problem of appearance in the public sector
- E. State Law on Conflicts of Interest
 1. Minnesota Statutes Section 471.87
 - a. State law prohibits public official from making decisions when they have a personal financial stake in the issues.

VIII. Gifts and Conflicts of Interest

- A. The Problem of gifts
 1. Gifts in private life
 2. Private virtue/public problem
 3. No such thing as a free lunch
- B. Gifts and appearances
 1. Gifts and the Santa Claus problem
 2. Gifting across professions
 3. When are gifts permitted?
 - a. Should nominal value be permitted?
 - b. Should gifts be permitted if there are ongoing friendships?
- C. Minnesota Law and Gifts
 1. Minn. Stat. §§ 471.895, 10A.071.
 2. Gifts from lobbyists and interested parties are prohibited.

- a. Very narrow band of exceptions.

IX. How to Identify Conflicts of Interest

- A. Is self-policing enough?
 - 1. The problem of biased judgment
 - 2. Checklist
 - a. Use of special information?
 - b. Personal profit (beyond salary)
 - c. Compete with the County?
 - d. How would it look on the 10 PM news (appearance)
- B. Conflict of Interest policies
 - 1. What policies cover your position/jurisdiction?

X. How to Avoid Conflicts of Interest

- A. Follow applicable policies
- B. Disclosure
- C. Ask how it would look on the 10 PM news or would your mother approve?
- D. Seek advice from supervisor, HR, or ethics officer
- E. If in doubt, don't do it!!!

XI. Conclusion

- A. Legal and ethical rules are not a hindrance but improve your performance
 - 1. Strengthen public confidence
- B. Following the law is the bare minimum necessary to being considered an ethical public official, but it is not sufficient.

Problems

Imagine some public officials told you their new philosophy on life. These persons told you: 1) they would do nothing illegal or would never break the law; and 2) If it were not prohibited by law they would feel free to do X. Would you describe those persons as ethical or good? Phrased another way, is simply following the law to the letter enough to make one either ethical, a good person, or a good public official.

Is it illegal to gossip or talk about your neighbors? Is it illegal or unethical to talk to your partner about what kind of day you had at work?

Just for curiosity, you do a Red Wing records search on the candidates running for office in 2020. Is that ok? Would it matter if you accessed the records on your home computer?

As a diligent hard working Red Wing board member you decide to take some work home to do over the weekend. On Friday afternoon you copy some data and download a database to your home computer so that you can do the work you want. Was this a good idea?

You are overseeing several contracts for services to be provided to Red Wing. You know that one of your neighbors has a company that provides these types of services so you contact her and urge

her to submit a bid. Is there a problem? What if you contact a former company and urged them to submit a bid? Would it matter if you were the one reviewing and approving the contracts?

You serve on the Planning Commission for Red Wing. You learn that your next door neighbors have sold their house. On break you use your office computer to access their records. Later after work you go home and tell your partner about what you learned. Assess.

You attend a training session hosted by a software vendor providing services to your board. At the end of a training session the vendor distributes coffee mugs and note pads with its name to all the workshop participants as a thank you for attending. Can you accept the mugs and pads?

You are a board member in Red Wing and are very much interested in an issue being debated by the city council. Are you allowed to contact a council member? Campaign for one?

You decide to create a blog or a Facebook page where you regularly discuss matters about work on our board or commission. You call it "My life in Red Wing." May you do this?

You are really excited by the 2020 elections and decide to create a blog or Facebook page where you discuss the issues and candidates and you make your own personal endorsements. You do this at lunchtime at work. Isn't this a great idea? Would it be a better idea to do it at home? Could you work on this during a board meeting?

You are a Red Wing board or commission member and working with a vendor who owns a business. While talking to him he tells you about several job openings at his company. Can you apply for these jobs?

You decide to write a daring, tell-all book about your work. The title is: *Dirty Wing! The Real Story of City Government*. Can you write this book? Should you? What if all of the information in the book is public information? Would it matter that instead of writing a book you posted this information on your blog? Or how about on a friends-only Facebook page that is not public?

You are serving on a Red Wing board or commission and are very excited about a forthcoming proposal coming before your body. You call several other members of the board/commission to discuss some ideas you have, hoping to get a better idea on how to best amend it. Can you do this? Can you call one other person to do this? What if you think the proposal is going to be very controversial and you want to call other board members to resolve some issues before the next meeting?

You socially run into another board member at a coffee shop and decide to talk shop about coming agenda ideas. You reach agreement on a couple of ideas on how to proceed with a new proposal. Was this a good thing to do?

You send an email to another board member discussing a coming agenda item. Is this email public information? What if sent from a private email account?