

Meeting the Public's Expectations and Resolving Ethical Dilemmas

This continuing education article and accompanying self-assessment is worth 2.0 elective credits as part of MTA's Township Governance Academy. See page 22 for details.



OBJECTIVE

- To use the tools and resources provided to encourage the township board to adopt standards of conduct
- To recognize the value of transparency—beyond the legal issues (closed sessions, conflicts of interest, linking with the community)

CORE COMPETENCIES

Interpersonal Skills: Communicates effectively; listens attentively; and works effectively with individuals, departments and committees to achieve desired outcomes

Leadership Abilities: Demonstrates behavior that results in public trust; possesses knowledge of what constitutes ethical behavior

No one who runs for public office envisions finishing his or her career in government charged with a crime or thrown out in disgrace by the electorate. No newly elected official plans on seeing the local paper run banner headlines accusing him or her of wrongdoing. Since virtually all who enter public service expect to depart their office with their dignity and reputation intact, then why do

some township officials, along with public officials at all other offices, find themselves accused of wrongdoing or of breaking the public's trust? Why do these types of things occur, and what steps can be taken to prevent public service from becoming a nightmare?

Township officials can avoid public humiliation and lessen the risk of losing their office—or having legal sanctions resulting from misconduct in office levied on them—by understanding that state statutes and the public expect certain behavior from public officials. To reduce ethical and legal dilemmas from arising, it is critical for all elected officials to:

- (1) not financially benefit from their positions
- (2) not receive special benefits by virtue of their positions
- (3) not practice secrecy in decision-making
- (4) not allow favoritism and bias to cloud their actions

These four tenets, according to the Institute for Local Govern-

ment's Public Service Ethics Program, are the basic elements of ethical conduct in public office.

WHAT ETHICS ARE ... AND AREN'T

Ethics are the ground rules of what one *ought* to do, not merely what one *must* or *must not* do. Unfortunately when holding public office, it's not enough to simply do the right things. To preserve the public's trust, it's equally important for the official to continually communicate his or her intentions and the reasons why certain actions are taken.

Accusations of ethical lapses can result from a wide variety of wrong judgments and poor communications. The public has its own expectations and values that may not be consistent with a public official's or public body's own sense of right and wrong. Officials may erroneously assume that conduct, which is acceptable in one's private business, is okay in the public sector as well. Others may think that if a particular action or decision is legal, it will also be perceived as being ethical.



Ethical lapses are often rationalized or justified by asserting that all of the good deeds one does in public office will cause the public to forgive a few "minor" ethical transgressions. Public apathy or media disinterest in the affairs of a particular government entity may create a cavalier attitude that people won't know and won't care. Sometimes public officials think that an apathetic public will give them the benefit of the doubt if an ethically ambiguous situation comes to light.

These assumptions are often proven wrong.

Unfortunately, one also cannot assume that ethical conduct will always be rewarded by one's constituents, as too many former township officials can attest. Sometimes doing the right thing

means paying the price of being subjected to public condemnation or even recall from office. Doing the ethical thing can require uncommon courage, even a willingness to sacrifice one's office when the voters do not support an ethical decision.

More often, however, charges of unethical conduct in office will, at a minimum, result in one or more of the following:

- Erode a public official's authority and influence on public matters,
- Divert attention away from pressing policy issues due to the energy needed to defend the questioned behavior or conduct, and/or
- Provoke a recall or formidable challenge in the next election.

Further, ethical lapses by public officials erode the public's confidence in its governmental institutions, resulting in the need to spend valuable time restoring trust or responding to distracting demands for extraordinary documentation and proof that other ethical lapses are not occurring.

MICHIGAN LAWS PROVIDE SOME GUIDANCE

Public officials can be subjected to legal sanctions when an ethical lapse falls within conduct prohibited by state law. In many ways, statutory ethical dilemmas should be the easiest issues for a public official to resolve: comply with state law. However, public officials can face great temptation when confronted by an opportunity to enjoy financial enrichment from a particular decision.

Michigan does not require public officials to disclose their sources of income or their interests in property or business concerns, so compliance often requires self-disclosure. Fortunately for townships, especially in smaller communities, people often have a more intimate awareness of each other's business dealings, so undisclosed conflicts of interests are less likely than in larger jurisdictions.

Michigan laws addressing the ethics of conflicts of interests and holding incompatible offices are rife with exceptions and qualifications. Consequently, competent legal advice is often needed to determine exactly what action the law requires.

CONFLICTS OF INTEREST

Conflicts of interest arise when a public official has a direct financial interest, positive or detrimental, in the outcome of a decision or action that he or she might take as a public official. Conflicts of interests can arise from land use decisions when the value of property owned by a public official will be impacted by the public official's vote or decision. Conflicts of interest also are created when a public official is involved in a business transaction with the public body.

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Township officials, like all other elected officials, are required by law to refrain from participating in any decision that creates a conflict of interest. *Recusing* oneself from participating in a decision requires more than merely refraining from voting. Rather, a public official is expected to publicly declare the conflict of interest, to physically remove himself or herself from the discussion, to avoid in any way influencing the outcome of the decision, and after taking all of those actions, abstain from voting.

INCOMPATIBLE OFFICES

Michigan law also addresses the prohibition against holding incompatible offices that may cause a public official to compromise his or her duty to act in the best interest of one entity to fulfill his or her duty to serve the best interests of another. Like the state conflict of interest statute, Michigan's incompatible office statute also allows for a great many exceptions.

A public official, with the help of knowledgeable legal counsel, should explore the issue of incompatible offices before accepting a

second public office. The criteria defining incompatible offices appears straightforward, but requires a deep understanding of the duties, responsibilities and relationships that might develop between the two offices. Holding incompatible offices can cloud the legal authority of the public official to act in either capacity, and the courts have the option to declare the first office vacant upon assuming the second, incompatible office. The remedy of abstaining from voting (which can solve a conflict of interest dilemma) is not available to solve an incompatible office dilemma, because offices that cause a breach of duty are inherently incompatible, and failing to vote, unless there is a conflict of interest, is a breach of duty.

AVOIDING THE APPEARANCE OF IMPROPRIETY

Acting ethically in a public position is more than merely following the law. It also means more than just doing the right thing. Ethical behavior requires conducting one's public affairs in such a way that the mere *appearance of an impropriety* is avoided.

A public official confronts an ethical dilemma when the outcome of a decision or action taken by him or her will impact, favorably or detrimentally, on personal relationships. For example, land use issues are frequently contentious and emotional, often leading to friends, coworkers or campaign supporters using their personal relationship with a public official to influence a decision. Township officials who vote a particular way may subject themselves to lost friendships, erosion of campaign support, adverse relationships with neighbors or even a loss of customers or clients in their personal business.

The ethical choice for a person who holds public office and who is on the "hot seat" is to do justice to the best interests of the entire community—even if that choice damages personal or business relationships. The risk of damaged personal relationships or political retaliation is not justification to shirk legal responsibilities. No one ever said that being an elected official is easy, and a public official may have a duty to vote, or to make administrative decisions that could anger others. ►

A township official who has no financial connection to an issue but who, nonetheless, has friends or relatives who *are* affected by the decision sits squarely on the horns of a dilemma. To abstain from voting shirks one's duty to act, but participating in the vote creates an appearance of bias and favoritism. Which ethical principle should prevail?

Avoiding the appearance of impropriety can be a complex matter. Transparency in all township decisions and actions will go far in instilling public confidence that the public's interest is consistently being served.

Nevertheless, public officials can face a dilemma of ethics that is not easily resolved merely by abstaining from voting. For example, an official might perceive a need to abstain from participating in a decision because the official's objectivity is in question due to friendships or other prior outside relationships with a person who would be affected by the decision. However, the official has an ethical duty to exercise the authority of his or her office by voting. Is it a breach of duty to abstain from voting for reasons other a direct conflict of interest?

This dilemma is another case where legal counsel should be consulted, as Michigan statutes and case law are somewhat ambiguous on the question of voting duties. Appellant courts have not rendered much guidance on this issue, and various circuit courts could differ in their decisions as well. Again, legal counsel's analysis and advice should be sought, given the facts and circumstances of a specific situation. If legal counsel's conclusion is that the official has a duty to vote, then full disclosure of all extraneous issues, along with a full explanation of the rationale of one's vote to assure the community that one's actions are consistent with the values of fairness and the greater public good, will go far to eliminate the appearance of impropriety.

WHEN 'PERKS' DON'T LOOK SO PERKY

Public officials also may be tempted to enjoy special benefits that may become available by virtue of one's public office that would not be available to others. These "perks" might include offers of gifts or lavish meals, free travel, or the opportunity for personal use of township property, such as maintenance equipment or free use of copiers or phones.

It doesn't take a lot of creativity to find justifications for taking advantage of available special benefits:

- "This job pays so little, I am entitled to some freebies."
- "I put in a lot of unpaid hours, so the township owes me some free use of its equipment."
- "My vote (or business) cannot be bought by a free meal or a few drinks."
- "Everyone else is taking these benefits."

Rare is the elected official who refuses all gifts and favors, even those of minimal value. Indeed, the Michigan Legislature has, by law, set a dollar value limit on gifts to legislators, which is indexed to inflation and currently allows gifts in value up to \$52. Nonetheless, the "slippery slope" is very real, and just where the appropriate line should be drawn is likely dependent on the context of the situation, the prevailing values of one's constituents, and, of course, the comfort level of the public official.

A valid test to determine the appropriateness of receiving a special benefit is to ask oneself the following questions:

- Which course of action will most likely instill public confidence in the township and its leaders?
- How much personal discomfort would be caused if the local paper made the conduct its front-page headline?
- Would there be any hesitancy in telling one's mother?

CHOOSING AMONG COMPETING ETHICAL VALUES

In addition to fairness and acting in the greater good, ethical experts have identified a number of universal values that guide ethical public conduct. According to the Institute for Global Ethics, public officials are expected to display the following universal ethical values:

- Trustworthiness
- Responsibility
- Fairness
- Respect
- Vision
- Compassion

Ethical choices confront township officials all the time, but they may not be perceived as ethical dilemmas as much as just disagreements of public policy. Indeed, many public policy disputes are, at their cores, disagreements as to which, among competing ethical values, should prevail in particular circumstances. For example, township boards often have to decide if one of its rules or ordinances should be applied to everyone equally, or if the township ought to make exceptions when these same rules create unusual hardships in unique circumstances.

Public officials who act ethically are expected to act "in the community's best interest," but what is the "community?" Is the "community" the area confined by the township's corporate boundaries, or is "community" a broader area that shares a common culture, vision, or economic challenge? If an elected township official represents the township on the board of a regional body, to which body does the official hold the higher ethical duty—to act in the best interests of the township or the best interests of the region?

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State Laws Address a Multitude of Ethical Issues

Michigan laws proscribe certain behavior and conduct that prohibit public officials from unfairly using their offices to benefit personally, and require public officials to put the interests of the organization to which they have been elected above the interests of any other entity in which the public official simultaneously holds an interest. Ethical standards of public officials encompass these issues in the laws that prohibit *conflicts of interest* and simultaneously holding *incompatible offices*.

Following what many viewed as abuses of power related to the Watergate scandal in the early 1970s, Michigan added laws requiring that all governments operate open to public scrutiny through the Open Meetings Act (OMA) and the Freedom of Information Act (FOIA). The Whistleblower Protection Act prohibits retaliation against public servants who disclose what they perceive to be wrongdoing in public entities.

In fact, many laws have been adopted to require adherence to various ethical principles. Open and transparent government is fostered through a multitude of public hearing requirements as well as our budgeting and accounting laws. Election laws guarantee that everyone has a fair chance of being elected to public office.

When state laws prohibit a public official from acting in an unethical manner, serious legal consequences can ensue from violating the acts. Inadvertent violations might result in public reprimands, but many judges might also invoke the principle that ignorance of the law is no excuse. Overlooking arcane requirements might be forgiven, but public officials are expected to be well-grounded in

the expectations of lawful public conduct. The state penal code empowers judges to impose fines and imprisonment on public officials who break the public trust, particularly for misuse of public funds.

All township officials should be well aware of the provisions of two of the better-known ethics statutes: OMA and FOIA. However, there are ethical underpinnings to a variety of other state laws. Some of these statutes include:

- Neglect of duty, Penal Code (MCL 750.478).
- Fiduciary duty, Penal Code (MCL 750.489)
- Embezzlement, Penal Code (MCL 21.154)
- Commingling funds illegal expenditures, Penal Code (MCL 750.490).
- Extension of credit, nonpublic use of funds, Penal Code (MCL 750.490a)
- Custody of Records, Penal Code (MCL750.492)
- Whistleblower Protection Act (MCL 15.362)
- Political Activities of Public Employees (MCL15.403 (1), *et seq*)
- Incompatible Office of Public Officials (MCL 15.181(b), *et seq*)
- Contracts of Public Servants With Public Entities (MCL 15.322(1), *et seq*).

For a more detailed description of these laws, visit www.michigan-townships.org and select *State Laws Address a Multitude of Ethical Issues*, under Headlines & Hot Topics.

Many arguments at the township board table are not about absolute rights or wrongs, but rather which ethical values should prevail in a particular circumstance. When choosing among competing ethical values (see chart on page 21), officials must rely on some criteria:

- Which course of action is consistent with the greatest number of these ethical values?
- Is there a course of action that is more consistent with a particular value that is more important to you?
- What action is most appropriate for a public office holder?
- What action will reflect most favorably on you and your township?

Without implying that some communities expect more ethical behavior from their elected officials than do other communities, public perception of some issues will be influenced by the context of the activity. For example, nepotism—the practice of hiring relatives or others with close ties to a public official—is widely perceived as an unethical practice because it violates the value of fairness. Yet many township officials appoint their spouses as their deputies, without provoking criticism.

Why are residents in smaller communities more tolerant of nepotism? Likely it is because the practice of having a spouse as a deputy is understood by the public as a practice that is done for the community's benefit rather than for personal benefit. In smaller communities where clerks and treasurers work out of their homes, the public is arguably better served by having spouses available to register voters or accept property taxes when the elected official is away from home. Further, these deputies often receive little, or no, compensation. On the other hand, a township clerk or treasurer in a larger township who appointed his or her spouse to a full-time position would likely face considerably more criticism.

ENSURING ETHICAL CONDUCT

Township boards will likely deal with ethical issues such as these over and over again as they resolve the myriad of issues that public bodies must confront. But what about the township board's subordinates—the department heads, employees and volunteers that make countless independent decisions on behalf of the township? What will guide their choices? How does a township board ensure that those who represent the township on everyday matters will consistently act ethically, or that, when confronted with conflicting ethical values, they will choose the course of action that is consistent with the community's values and preferences?

It's up to the township board, and its individual members, to set a high ethical example for others. In addition, the board must artic-

ulate through carefully considered policies, the type of conduct it expects of its officials, volunteers and employees and to which the township's residents and taxpayers deserve.

One of the virtues of township government is that state laws require them to operate in a manner that promotes ethical government. The statutory structure of townships deliberately diffuses power and authority to discourage the types of ethical abuses that can arise when a single individual can act with impunity. However, for state laws to consistently enforce ethical conduct, the township board must understand these legal requirements, adopt policies that require compliance, and monitor township operations to ensure accountability.

Township officials customarily operate in a virtual "goldfish bowl" where little is done without public scrutiny and being second-guessed in the local paper or over coffee at the neighborhood café. Township governments that operate in a manner consistent with law and fidelity to their grassroots tradition of public involvement will create a culture where misdeeds are unlikely to occur. Township law also provides for a greater role for electors in township affairs, and it is traditional of townships for residents to ask questions and stay engaged in township affairs.

Deliberate, careful and thoughtful consideration of the ethical implications by public officials of their actions and decisions, as well as of the decisions and actions that he or she shares with other members of a public body, will go far to ensure favorable headlines. And equally important, the public will continue to see their township government as a dependable instrument of the public good.

ACKNOWLEDGMENT

The author extends his appreciation to the Institute for Local Government's Public Service Ethics Program, an affiliate of the California League of Cities, for the development of material on which portions of this article was based. The Institute's Web site can be found at www.ca-ilg.org.

G. Lawrence Merrill,

MTN Publisher and MTA Executive Director



Public Service Values

When we talk about the values that ought to guide one's public service, what kinds of values do we mean? The following provides some ideas on values that can inform one's public service and suggests examples of what those values mean in practice.

TRUSTWORTHINESS

- I remember that my role is first and foremost to serve the community.
- I am truthful with my fellow elected officials, the public and others.
- I avoid any actions that would cause the public to question whether my decisions are based on personal interests instead of the public's interests.
- I do not accept gifts or other special considerations because of my public position.
- I do not knowingly use false or inaccurate information to support my position.
- I do not use my public position for personal gain.
- I carefully consider any promises I make (including campaign promises), and then keep them.

FAIRNESS

- I make decisions based on the merits of the issues.
- I honor the laws and the public's expectation that agency policies will be applied consistently.
- I support the public's right to know and promote meaningful public involvement.
- I support merit-based processes for the award of public employment and public contracts.
- I am impartial and do not favor those who either have helped me or are in a position to do so.
- I promote equality and treat all people equitably.
- I excuse myself from decisions when my or my family's financial interests may be affected by my agency's actions.
- I credit others' contributions in moving our community's interests forward.
- I maintain consistent standards, but am sensitive to the need for compromise, "thinking outside the box," and improving existing paradigms.

RESPONSIBILITY

- I work to improve the quality of life in the community and promote the best interests of the public.
- I promote the efficient use of agency resources.
- I do not use agency resources for personal or political benefit.
- I represent the official positions of the agency to the best of my ability when authorized to do so.

- I explicitly state that my personal opinions do not represent the agency's position and do not allow the inference that they do.
- I take responsibility for my own actions, even when it is uncomfortable to do so.
- I do not use information that I acquire in my public capacity for personal advantage.
- I do not promise that which I have reason to believe is unrealistic.
- I disclose suspected instances of impropriety to the appropriate authorities, but I never make false charges or charges for political advantage.
- I do not disclose confidential information without proper legal authorization.
- I am proactive and innovative when setting goals and considering policies.
- I consider the broader regional and statewide implications of the agency's decisions and issues.
- I promote intelligent innovation to move forward the agency's policies and services.

RESPECT

- I treat fellow officials, staff and the public with courtesy, even when we disagree.
- I focus on the merits in discussions, not personality traits or other issues that might distract me from focusing on what is best for the community.
- I gain value from diverse opinions and build consensus.
- I follow through on commitments, keep others informed, and make timely responses.
- I am approachable and open-minded, and I convey this to others.

- I listen carefully and ask questions that add value to discussions.
- I involve all appropriate stakeholders in meetings affecting agency decisions.
- I come to meetings, and I come to them prepared.
- I work to improve the quality of life in my community.

COMPASSION

- I realize that some people are intimidated by the public process and try to make their interactions as stress-free as possible.
- I convey the agency's care for, and commitment to, its community members.
- I am attuned to, and care about, the needs and concerns of the public, officials, and staff.
- I recognize my responsibility to society's less fortunate.
- I consider appropriate exceptions to policies when there are unintended consequences or undue burdens.

LOYALTY

- I safeguard confidential information.
- I avoid employment, contracts and other financial, political and personal interests that can conflict with my public duties.
- I prioritize competing issues based on objective benefits and burdens to the public interest, not to myself, my family, friends or business associates.
- I don't oppose final decisions once they have been made by the decision makers, except through internal lines of communication.
- I put loyalty to the public's interests above personal and political loyalties.

THE IMPORTANCE OF PUBLIC PERCEPTION

The interesting—and somewhat unique—aspect of public service ethics is that it is not exclusively an introspective process. A public official can be absolutely confident that he or she is able to put personal interests or relationships aside, but the public may still question whether indeed that is so.

Public perception, therefore, matters a great deal in one's analysis of what the "right thing to do" is in public service. This is because, as public servants, public officials are stewards of the public's trust in the public's governing institutions.

In short, public service ethics are not only about doing the right thing, but also about

the public's confidence that indeed the right thing has been done. But not doing the right thing just because the public's perception may be negative can have its own pitfalls.

To step, or at times tiptoe, along the trail toward good government, here is a simple (but not necessarily easy) process:

- First Step: Figure out what "the right thing" to do is.
- Second Step: Figure out what the public's perception of "the right thing to do" would be.
- Third Step: When needed, balance the first two steps and follow the path which best supports public service values.

Reprinted courtesy of the Institute for Local Government's Public Service Ethics Program. For more information, visit their Web site at www.ca-ilg.org.

Continuing Education Self-Assessment



Participants enrolled in the Township Governance Academy (TGA), a credentialing program offered through the Michigan Townships Association, may obtain 2.0 elective credits for successful completion of this quiz. To obtain credit, participants must answer the following 10 multiple-choice questions by circling the correct answer and receive a passing score of 70 percent. The questions are based on content from the article, *Meeting the Public's Expectations and Resolving Ethical Dilemmas*, beginning on page 15.

There is no charge to take the quiz or to obtain TGA credit. Completed quizzes should be sent to MTA Education Center, 512 Westshire Drive, Lansing, MI 48917, or faxed to (517) 321-8908. MTA will notify you of your results within three weeks after receiving your quiz.

IMPORTANT: Please keep a copy of your completed quiz in your TGA binder.

Township officials interested in enrolling in the Township Governance Academy may call Shelley Tucker, MTA education specialist, at (517) 321-6467, ext. 251, or for more information, visit the MTA Web site at www.michigantownships.org, and click on the "Education" tab, then "Township Governance Academy."

TGA Continuing Education – October 2006 *Meeting the Public's Expectations and Resolving Ethical Dilemmas* 2.0 Elective Credits

(To receive credit, this quiz must be completed by October 1, 2009.)

NAME: _____ TOWNSHIP & COUNTY: _____

ADDRESS: _____ CITY/STATE/ZIP: _____

E-MAIL ADDRESS: _____

1. Ethical conduct requires:

- Conducting one's public affairs in such a way that the mere appearance of an impropriety is avoided.
- Allowing your personal relationships to influence decisions.
- Avoiding choices that damage personal or business relationships.
- All of the above

2. Which of the following statements is false?

- Township officials are required by law to seek competent legal advice to determine what action the law requires.
- Township officials are required by law to refrain from participating in any decision that creates a conflict of interest.
- Recusing oneself from participating in a decision requires more than merely refraining from voting.
- Public officials are expected to publicly declare the conflict of interest, remove themselves from the discussion, avoid influencing the outcome and abstain from voting.

3. What is the best way to determine whether abstaining from voting—for reasons other than a direct conflict of interest—is a breach of duty?

- Refer to Michigan statutes and case law
- Consult legal counsel
- Contact other township officials for their opinion
- Seek guidance from appellate or circuit court decisions

4. Which of the following statements is false as it relates to the issue of incompatible offices?

- Public officials, with assistance from legal counsel, should explore the issue of incompatible offices before accepting a second public office.
- The criteria defining incompatible offices requires a deep understanding of the duties, responsibilities and relationships that might develop between the offices.
- The remedy of abstaining from voting can solve an incompatible office dilemma.
- Holding incompatible offices can cloud the legal authority of the public official to act in either capacity.

5. Which of the following is NOT a universal ethical value a public official would be expected to display?

- Trustworthiness
- Fairness
- Nepotism
- Vision

6. What is the most important reason for public officials to continually communicate their intentions and reasoning to the public?

- To prevent public humiliation
- To preserve the public's trust
- To get reelected
- To minimize the risk of incurring legal sanctions

7. The remedy of abstaining from voting can solve:

- An incompatible office dilemma
- A conflict of interest dilemma
- Both a and b
- None of the above

8. Ethics are:

- The ground rules of what the public expects one to do
- The ground rules of what one must do
- The ground rules of what one must not do
- The ground rules of what one ought to do

9. In order for state laws to consistently enforce ethical conduct, the township board must:

- Understand legal requirements, adopt policies that require compliance and monitor operations to ensure accountability
- Set a high ethical example for others
- Carefully consider and adopt policies as to the type of conduct it expects of its employees and volunteers
- Operate in a manner that promotes ethical government

10. Doing the ethical thing:

- Will always be rewarded by one's constituents
- Often results in legal sanctions
- May subject one to public condemnation or recall
- Typically results in the need to spend time restoring voter trust or responding to distracting demands