TIPS ON GOOD GOVERNMENTAL PRACTICES

FOOD FOR THOUGHT

www.bhamgov.org/ethics

September 24, 2015
December 1, 2015
Ethics in Government
presented by Board of Ethics members Sophie Fierro-Share, John J. Schrot, Jr., and James D. Robb

Open Meetings Act & Freedom of Information Act
presented by Tim Currier, City Attorney

Parliamentary Procedures & Roberts Rules of Order
presented by Coco Siewert, Professional Registered Parliamentarian
FOOD FOR THOUGHT

ETHICS IN GOVERNMENT

PRESENTED BY
SOPHIE FIERRO-SHARE,
JOHN J. SCHROT, JR., AND
JAMES D. ROBB
FOOD FOR THOUGHT

UNDERSTANDING THE DIFFERENCE BETWEEN MORALITY AND ETHICS

PRESENTED BY SOPHIE FIERRO-SHARE
ETHICS

- Beliefs about what constitutes correct or proper behavior.
- Standards of conduct an individual uses to make decisions.

MORALITY

- Involves the judgement or evaluation of an ethical system, decision, or action based on social, cultural, or religious norms.
- Often confused with ethics.
## COMMON TERMS USED IN THE DISCUSSION OF ETHICS

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<th>ETHICS</th>
<th>MORALS</th>
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<td><strong>What are they?</strong></td>
<td>The rules of conduct recognized in respect to a particular class of human actions or a particular group or culture.</td>
<td>Principles or habits with respect to right or wrong conduct. While morals also prescribe dos and don’ts, morality is ultimately a personal compass of right and wrong.</td>
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<td><strong>Where do they come from?</strong></td>
<td>Social System – External</td>
<td>Individual – Internal</td>
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<td><strong>Why do we do it?</strong></td>
<td>Because society says it is the right thing to do.</td>
<td>Because we believe in something being right or wrong.</td>
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<td><strong>The “Gray”</strong></td>
<td>A person strictly following Ethical Principles may not have any morals at all. Likewise, one could violate Ethical Principles within a given system of rules in order to maintain moral integrity.</td>
<td>A moral person although perhaps bound by a higher covenant, may choose to follow a code of ethics as it would apply to a system.</td>
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<td><strong>Acceptability</strong></td>
<td>Ethics are governed by professional and legal guidelines within a particular time and place.</td>
<td>Morality transcends cultural norms.</td>
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EXAMPLES

- MORAL BEHAVIOR OR ETHICAL BEHAVIOR?
  - 1. County Clerk refuses to issue marriage licenses to same sex couples because of religious beliefs.
  - 2. Defense attorney represents someone he/she knows to be guilty of a crime that he/she may find to be reprehensible.
The Birmingham Ethics Ordinance is an Ethically based document. It's purpose is to assure the public that all official acts result from a fair process. "It must provide its officials and employees with adequate guidelines for separating their roles as private citizens from their roles as public servants"
Questions?
FOOD FOR THOUGHT

THE ETHICS ORDINANCE AND THE BOARD OF ETHICS

JAMES D. ROBB
CODE OF ETHICS

- HELPING TO PRESERVE PUBLIC TRUST IN THE INTEGRITY OF GOVERNMENT

The City of Birmingham has declared that public office and employment are public trusts. For government to operate properly, each city official, employee, or advisor must earn and honor the public trust by integrity and conduct. All city officials, employees, and advisors must avoid conflicts between their private interests and the public interest and must not use public office for personal gain.
CODE OF ETHICS

PURPOSE:
- ENHANCE PUBLIC TRUST
- INFORM AND EDUCATE, NOT PUNISH
- AVOID CONFLICTS OF INTEREST

METHOD:
- BOARD OF ETHICS
  - DETERMINES COMPLIANCE WITH CODE
  - EDUCATES THE PUBLIC ABOUT THE CODE
THE MISSION OF THE CITY OF BIRMINGHAM BOARD OF ETHICS IS:

To foster an environment where city officials, employees, and professional consultants work together with integrity, honesty, and mutual respect, such that decisions are made which honor the public trust and enhance the quality of life in our community.
MISSION, cont’d

- To educate and inform the public about expected standards of conduct for city officials, employees, and professional consultants through resources such as the city’s website and newsletter.

- To strengthen citizens' confidence in the integrity of their city officials, employees, and professional consultants.
To provide an easily accessible opportunity for all city officials and employees, professional consultants, and the public to ask for advisory opinions of the Board of Ethics with respect to the Ethics Ordinance.

To address alleged violations of the Ethics Ordinance without delay and with due process and fidelity to the Ethics Ordinance.
BOARD OF ETHICS

OPERATIONAL PRINCIPLES:

- APPLY ORDINANCE
- WITHIN THE CONTEXT OF A CASE
- UNDER THE RULES
Through the Ethics Ordinance, the city has established rules of conduct for city officials, employees, and advisors and has designed a process for determining whether their conduct conforms to or violates the ordinance. That process contemplates the involvement of all citizens, not just city officials, employees, and advisors, in monitoring the integrity of city government.
When there is a question or a complaint as to the applicability of any provision of the Ethics Ordinance to a particular situation, the city directs that question or complaint to the Board of Ethics. The Board of Ethics may conduct hearings and issue advisory opinions as applicable under the ordinance.
The Rules of the Board of Ethics provide for three types of matters that may be referred to the board, depending on whose conduct is to be reviewed and who is requesting that review:

- Advisory Opinion
- Complaint
- Referred Question of Disqualification
BOARD OF ETHICS

- HOLDS HEARINGS
  - Gives notice to parties
  - Receives evidence – testimony and documents
  - Receives argument of the parties
  - Deliberates in public
  - Votes on decision, in public
  - Writes opinions that are published.
City officials or employees, including consultants, advisors, contractors, and persons serving on advisory boards and commissions, may desire a determination of whether their own conduct or anticipated conduct or the conduct of a person under their authority conforms to or violates the Ethics Ordinance. They may seek that determination by requesting an advisory opinion from the Board of Ethics on the advisory opinion request form. After a hearing at which the official or employee may appear, documents may be presented, and testimony taken, the board issues an opinion on the question presented.
City residents may desire a determination of whether the conduct of city officials or employees conforms to or violates the Ethics Ordinance. They may seek that determination by filing a complaint with the Board of Ethics on the complaint form. After an evidentiary hearing at which the complaining party and the responding party must appear, documents may be presented, and testimony taken, the board issues a decision on the question presented.
The city commission and the city’s various boards and advisory commissions may themselves desire a determination of whether *one of their members* should be disqualified, due to a disclosed conflict of interest, from discussion, deliberation, action, or voting on a particular matter. In that instance, the commission or board may refer the question to the Board of Ethics for a final determination as to the conflict in question and whether the official, commissioner, or employee must refrain from participation in the matter.
Contact Information

- To request an advisory opinion, file a complaint, or if you have any questions or comments regarding the Board of Ethics, please contact Laura Pierce, City Clerk by email lpierce@bhamgov.org or telephone at 248.530.1802.

- Ordinance, rules, decisions & forms available: www.bhamgov.org/ethics
Questions?
CONFLICT OF INTEREST
CONFLICT OF INTEREST

HOW TO AVOID THE HEADACHES
City officials subject to set of ethical principles.

Detailed ethical rules derived from these principles.

If ethical rules do not cover situation, come back to general principles for guidance in determining proper conduct.
CORE PRINCIPLES

- **OBJECTIVITY**
  - Place public’s interest before private interest or outside obligation
  - Choices need to be made on merits

- **SELFLESSNESS**
  - No decisions to gain financial or other benefits for oneself, family, or friends.
CORE PRINCIPLES

- STEWARDSHIP
  - Duty to conserve public resources against misuse and abuse

- TRANSPARENCY
  - Practice open and accountable government
  - Yet protect truly confidential information

- INTEGRITY
  - No financial or other obligation to outside individuals or entities that might influence official duties
RULES FOR PRESENT CITY OFFICIALS AND EMPLOYEES

- Confidential Information
- Conflicting Outside Employment
- Gifts
- Improper Economic Benefit
- Persons Required to Report
- Political Activity
- Prohibited Interests in Contracts
- Public Property and City Resources
- Representation of Private Interests
- Unfair Advancement of Private Interests
WHAT WILL THIS GUIDANCE/TRAINING DO FOR YOU?

- Help recognize dangers (conflicts of interest)
- Protection from inadvertent and possible career-ending violations (civil or criminal penalties).
- Applying ethics rules can be complex
- Learn to take a cautious approach
- Learn to contact Board of Ethics for specific guidance
WHAT IS SO IMPORTANT ABOUT THIS GUIDANCE?

- Learn to get ethics advice before involvement in potential conflict of interest
- Orient yourself to a way of thinking that identifies potential ethics problems.
- To determine whether you need to seek specific guidance before engaging in an activity
- Focus on general ethical principles and their relation to real life situations
- Avoid violations, fines, loss of job, or even imprisonment
- Upholding the public’s confidence in the integrity of city government
WHY AN ETHICS ORDINANCE?

- To establish minimum standards of conduct while performing public duties

- To remove doubts concerning violations of public trust and confidence, the impairment of independent judgment, and favoritism in the performance of public duties that can be created by outside or personal interest.
WHAT IS THE BASIC PURPOSE OF THE CITY’S ETHICS ORDINANCE?

- To uphold the public’s confidence in the integrity of the City’s government
WHAT DO ETHICS HAVE TO DO WITH IMPROVING THE QUALITY OF THE PEOPLE WHO ARE CITY OFFICIALS?

- To attract talented people to public service, government:
  - Must be respected for its honesty and integrity
  - Must make decisions on the merits
  - Must be untainted by consideration of private gain and rules of conduct during and after service are clear and complete
WHAT DO I DO IF I HAVE A CONFLICT OF INTEREST?

- Disclose any interest that may be in conflict with official duties
- Abstain from participation in any governmental discussions or actions on any issue where the interest may be affected
- Let your supervisor, manager or board chair decide how to best resolve the conflict
WHEN DO I DISCLOSE AND POSSIBLY RECUSE MYSELF?

- If about to take official action on matter you know is likely to provide financial gain to yourself, family, employer, business associates, clients, or interested business entity.
- If a supervised employee, notify your supervisor about the possible conflict as soon as possible.
- If a board member, notify the members of the board of the conflict and excuse yourself.
IS THERE A CITY POLICY BALANCE AS TO THE USE OF THE REQUIRED AFFIDAVIT AND DISCLOSURE STATEMENT (Section 3-326)?

Yes, between the risk of discouraging citizens from serving in public office by excessive disclosure requirements and the risk of public mistrust and cynicism by no disclosure or under-disclosure.
WHY ARE THERE GENERAL GUIDELINES FOR THE USE OF CITY RESOURCES?

- City officials have a duty to ensure proper stewardship of city resources
- Resources under official control may not be used for private benefit or gain (e.g. Section 2-324 (a)(III))
WHAT TYPES OF RESOURCES ARE COVERED UNDER THE ETHICS ORDINANCE?

- All resources
- For example, funds, facilities, tools, equipment, vehicles, consumable resources, city information, data bases, employee lists, employees and their time
IF I USE CITY RESOURCES, CAN I JUST REIMBURSE THE CITY OF THE USE?

- No, reimbursing for personal use may result in personal benefit and may impose administrative burdens.
- Reimbursing creates misperception that personal use is allowable as long as paid for.
MAY I SEEK EMPLOYMENT OUTSIDE THE CITY WITHOUT RESTRICTION?

- May not perform government duties that affect financial interests of outside entity if seeking employment with that entity
FREQUENTLY ASKED QUESTIONS, cont’d

- IF I RECEIVE A GIFT AND DO NOT USE IT, OR I PASS IT TO A COLLEAGUE, HAVE I RECEIVED A GIFT?
  - See Section 2-326A – disclosure of the tender or receipt of any gift to the city official or member of immediate family exceeding $50.00
FREQUENTLY ASKED QUESTIONS, cont’d

- CAN I ATTEND MEETINGS OF THE BOARD OF ETHICS?
  - Absolutely. They are open to the public, subject to the Open Meetings Act.
WHAT IS THE PURPOSE OF A REQUEST FOR ADVISORY OPINION?

If belief that a conflict of interest could be created by taking a certain course of action, then City official should ask the Board of Ethics for an advisory opinion.
WHO ACTUALLY ISSUES AN OPINION?

- Upon submission of request to Board of Ethics for official determination, after review and/or hearing, the requester will receive a written opinion stating the Board’s opinion and reason(s) for that opinion (see Section 2-325B).
- Board of Ethics also receives complaints, conducts hearings thereon and issues written opinions.
WHAT IS THE EFFECT OF THE FILING OF A COMPLAINT?

- If requested by alleged violator, a public hearing will be scheduled
- Board is impaneled to hear the case
- Within seven days after filing, a date for hearing is set
- An attorney may present the case
- Witnesses may testify
- Evidence may be introduced
- Board of Ethics will render a ruling/written opinion
- See Section 2-325 B(I)
IF THE BOARD OF ETHICS HOLDS A PUBLIC HEARING FROM A COMPLAINT THAT I HAVE FILED, WHAT IS MY ROLE?

- In most cases, the complainant will be a witness
- Complainant is not an actual party
- Complainant has no burden of proving the case
AS AN ALLEGED VIOLATOR OF THE ETHICS ORDINANCE, WHAT RIGHTS DO I HAVE?

- Respondent entitled to a public hearing before Board of Ethics
DOES THE BOARD OF ETHICS HAVE THE POWER TO PENALIZE, AND IF SO, WHAT PENALTIES CAN THE BOARD ASSESS?

- All findings of the board hearings are published and communicated to City Commission and the public, subject to the Open Meetings Act.
- After publication, City Commission responsible for imposing any sanction for a violation of ordinance on one of its members or any person appointed by it to any city board.
- If removal of city official is necessary, city shall follow removal requirements under Michigan law.
- City Manager responsible for imposing discipline for violation of ordinance on any city employee.
- The Board’s power includes investigating complaints and conducting hearings under the due process procedures, but its power to penalize is limited to making findings and communicating same to the City Commission and the public.
You receive a ticket to a Jimmy Buffett concert. The day of the concert, you decide you never really liked Jimmy Buffett in the first place, and you decide not to go. You throw the ticket in the trash and watch American Idol at home on TV instead. According to the Ethics Ordinance, have you still received a gift, even if you did not make use of it?

___ Yes, I have still received a gift of a concert ticket.

___ No, I did not technically receive any gift, because I did not go to the concert.

Explanation:
According to the Ethics Ordinance, Section 2-322(VII), a gift (i.e. something that you directly and personally receive, which includes an instance in which you accept the opportunity to partake of or utilize the item), is a “private gain” (i.e. any interest or benefit, in any form, received). In order to avoid receiving a gift, you must either return the ticket before the event or reimburse the donor for its full cost.
You are a city employee and you also serve as a board member of a professional association. You are not paid for your work on the board, but certain benefits are routinely conferred upon officers. One benefit of being a board officer is free admittance to the association’s annual convention. Would attending the convention - paid for by the association - be considered a “gift” to you under the Ethics Ordinance?

___ Yes, this is a gift per the Ethics Ordinance because I am directly and personally receiving something of value.

___ No, this is not a gift per the Ethics Ordinance because my work on the board constitutes consideration for the value of the convention.

**Explanation:**
Benefits routinely conferred upon officials are not gifts since the individual’s work as an association officer serves as full consideration for these benefits. This satisfies the requirement that a gift has not been given if consideration of equal or greater value is given in return.
On their lunch break a group of City employees solicit holiday gifts on behalf of a family sponsored by Adopt a Family. When soliciting the gifts they voluntarily solicit and inform private municipal vendor businesses that they are employed by the City of Birmingham, but are soliciting on behalf of the sponsored family or Adopt a Family. Is this an ethical violation?

_____ Yes, the employees are using their City positions to influence the private business.

_____ No, by soliciting on behalf of the private charity and not for the City, they are not using their City positions to influence the private business.

**Explanation:**
This is an ethical violation. By stating that they are employed by the City, they are using their municipal positions to influence the private businesses and support the private charity.
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<th>DO NOT</th>
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<tr>
<td>Place loyalty to the Constitution, City Charter, the laws, and ethical principles above private gain</td>
<td>Use nonpublic information to benefit yourself or anyone else</td>
</tr>
<tr>
<td>Act impartially to all groups, persons and organizations. Treat everyone the same.</td>
<td>Solicit or accept gifts from persons or parties that do business with or seek official action from the City (unless permitted by an exception)</td>
</tr>
<tr>
<td>Give an honest effort in the performance of your duties</td>
<td>Make unauthorized commitments or promises that bind City and do not represent personal opinions as that of the City</td>
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## GENERAL ETHICAL PRINCIPLES

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<th>DO NOT</th>
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<td>Protect and conserve City property</td>
<td>Use City property for unauthorized purposes or personal use</td>
</tr>
<tr>
<td>Disclose waste, fraud, abuse corruption and other illegal or unethical behavior to appropriate authorities</td>
<td>Take jobs or hold financial interests that conflict with your government responsibilities</td>
</tr>
<tr>
<td>Fulfill in good faith your obligations as citizens and pay your taxes</td>
<td>Take actions that give the appearance that they are illegal or unethical</td>
</tr>
<tr>
<td><strong>DO</strong></td>
<td><strong>DO NOT</strong></td>
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<tr>
<td>Comply with all laws providing equal opportunity to all persons, regardless of their race, color, religion, sex, national origin, age, or handicap</td>
<td>Use your public office for private gain or to receive special treatment for yourself or anyone else, or even imply that you can affect City action for the benefit of another</td>
</tr>
<tr>
<td>Keep confidential City information that is confidential</td>
<td>Engage in outside activities or employment that conflict with your official duties</td>
</tr>
<tr>
<td><strong>DO</strong></td>
<td><strong>DO NOT</strong></td>
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<tr>
<td>Seek special privileges</td>
<td>Use your position to unfairly hurt anyone else’s chances of making or receiving what they are entitled to receive.</td>
</tr>
<tr>
<td>Show favoritism</td>
<td>Represent anyone else before a Birmingham City body, City staff or Court on a particular matter involving the City of Birmingham, whether you receive compensation or not.</td>
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WHAT IS THE BOTTOM LINE?

- Ask yourself if reasonable person who knew the facts would think ethical principles had been violated

- Avoid even appearance of violation of principles

- Understand and follow the ethical rules

- By following rules, you affirm public’s confidence in integrity of government, and avoid administrative, civil, or criminal penalties
If you have a question regarding the application of restrictions to your particular situation, contact the Board of Ethics in advance.

“The ultimate answer to ethical problems in government is honest people in a good ethical environment.”

- John F. Kennedy
“So, I’m the only one who sees a conflict of interest here?”
Questions?
FOOD FOR THOUGHT

OPEN MEETINGS ACT & FREEDOM OF INFORMATION ACT

PRESENTED BY TIM CURRIER
“All meetings of a public body shall be open to the public.”

“All decisions of a public body shall be made at a meeting open to the public.”

“All deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public” unless as otherwise specified in the act.
Definition. “Decision” is defined by Section 2 of the OMA to mean a determination, action, vote or disposition upon a motion, proposal, recommendation, resolution, ordinance, bill, or measure on which a vote is required and by which public policy is formulated.

Decision v Deliberation. Michigan Court of Appeals has defined “deliberations” as exchanging affirmative or opposing views, debating a matter, or engaging in discussion about a matter.
EXAMPLES OF PERMISSIBLE GATHERINGS

- Conferences and Workshops
- Presentations by Groups
- Social Gatherings
- Political Matters
EXAMPLES OF ILLEGAL MEETINGS

- Informal Meetings
- Misuse of Technology
MEETINGS AND TECHNOLOGY

- Telephone conference call (1977 OAG 5183)
- Interactive Television (1995 OAG 6835)
- Telephone conference calls (Goode v Department of School Services, 143 Mich App 756 (1985))
Sequential Communications

Real-Time Chat or Instant Messaging

Two-Way Communications

Distributing E-mail Information

Existing Restrictions and Policy Guidelines
“Public record” means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. Public record does not include computer software. This act separates public records into the following 2 classes:

- (i) Those that are exempt from disclosure under section 13.
- (ii) All public records that are not exempt from disclosure under section 13 and which are subject to disclosure under this act.

“Writing” means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.
Order

February 27, 2008

135841 & (30) (31) (32) (35)

DETROIT FREE PRESS INC., and
DETROIT NEWS,

Plaintiff-Appellees,

v

SC: 135841

283526

WAYNE CC: 08-100214-CZ

CITY OF DETROIT,

Defendant-Appellant.

Michigan Supreme Court
Lansing, Michigan

KELLY, J., concurring and dissenting:

I concur in the decision to deny leave to appeal. But I write separately to discuss the trial court’s decision to disclose the deposition transcript.

Under MCR 2.411(C)(5) statements made during the course of mediation are confidential. In pertinent part, this rule provides:

(5) Confidentiality. Statements made during the mediation, including statements made in written submissions, may not be used in any other proceedings, including trial, any communications between the parties or counsel and the mediator relating to a mediation are confidential and shall not be disclosed without the written consent of all parties.

Here, at numerous points during the deposition, attorney Michael Steffen was specifically questioned about incidents that occurred during court-ordered mediation. Because Steffen’s detailed recollection of events included statements made during mediation and communications between the parties or counsel, I believe certain parts of the deposition involved confidential communications under MCR 2.411(C)(5). But the city of Detroit did not argue for the redaction of this testimony. Instead, it asked the trial court to exempt the entire deposition from disclosure. Because most of the deposition testimony does not fall within the parameters of MCR 2.411(C)(5), the trial judge properly decided not to exempt the entire transcript from disclosure. And because the city did not specifically argue for redaction, I conclude that the trial judge did not abuse his discretion in not ordering redaction as sought.

The trial court ruled that the confidentiality requirement of MCR 2.411(C)(5) is subject to the crime-fraud exception discussed in People v. Pianalto, 207 Mich. App. 1, 520 N.W.2d 765 (1994). I do not rely on the crime-fraud exception to conclude that the judge did not abuse his discretion in ordering disclosure of the deposition transcript. Hence, I offer no opinion on the applicability of the crime-fraud exception here.

1 The trial court ruled that the confidentiality requirement of MCR 2.411(C)(5) is subject to the crime-fraud exception discussed in People v. Pianalto, 207 Mich. App. 1, 520 N.W.2d 765 (1994). I do not rely on the crime-fraud exception to conclude that the judge did not abuse his discretion in ordering disclosure of the deposition transcript. Hence, I offer no opinion on the applicability of the crime-fraud exception here.

Sincerely,

C. Colton R. Davis, Clerk of the Michigan Supreme Court, certifies that the foregoing is a true and complete copy of the order upon which this appeal is taken.

February 27, 2008

Attest: Clerk
Questions?
FOOD FOR THOUGHT

PARLIAMENTARY PROCEDURES

PRESENTED BY COCO SIEWERT
Questions?
CONCLUSION

THANK YOU FOR YOUR PARTICIPATION