

**NOTE: Scenario discussions are from real like events. Not all matters are clear cut and ethics boards may differ. The analyses have been developed by Mr. Crofoot over a period of years. Where the State's interpretation may differ, Mr. Lord and Mr. Crofoot will discuss.**

### **Scenario 1 Analysis - Snowstorm**

The scenario probably engenders the most discussion and the most disagreement among participants in the ethics program. The payment is a commercial bribe and most certainly violates the ethics code of the recipient. On the other hand, many participants argue that it was probably the only way for the town to be assured of obtaining the salt in advance of the storm.

The driver's boss bears a substantial responsibility for creating this dilemma. Because of his ill preparedness and his emphasis on having the salt prior to the storm, and his supervisory position, he has created a degree of urgency on the driver's part that impacted the driver's good judgment. *Employees should not be placed in a position that requires them to compromise their values, participate in bribery, or otherwise conduct themselves in a manner that reflects poorly on them.*

Further, it is not in the jurisdiction's interest to encourage employees to take short cuts and ignore rules for short term (or any term) gain and risk the reputation and good will of the jurisdiction in the eyes of others, particularly of those whose drivers did not pay the sop and consequently were kept at the end of the line. Clearly communicated values and standards of job performance can reduce or eliminate issues such as this.

If he is contacted in advance, he should advise the employee to maintain his place in line and not pay the bribe.

### **Scenario 2 Analysis – Rifle Rack**

Of course, the direct, ethical, and morally courageous answer and action is to decline to do so. The use of town material, time, etc., for the personal use or gain of another is (or should be) prohibited in all ethics codes. The practical side can be more troublesome.

Saying “no” to one's superior requires a degree of moral courage, a.k.a. backbone. Explain that you know he probably hadn't focused (giving him the benefit of the doubt) on the nature of his request but that you are concerned that such an action is not permissible and may result in both of you being caught up in an ethical violation. If he presses, notify the mayor or town manager.

It is not always easy to differentiate between a lawful and unlawful order or directive. *When in doubt, seek guidance.*

### **Scenario 3 Analysis – Planning Commission**

Yes, it would be permissible for Smith to vote on the project. He does not, and will not, have an interest in the project. However, because Smith has received work in the past from the developer, he should disclose his prior business relationship to avoid the appearance of

impropriety and any allegation of favoritism. Smith should consider not voting, even with the disclosure, unless his vote is needed to break a tie. Many codes allow for this even where there may be a disclosed interest on the part of the legislator or official.

It would not be ethical for a commissioner to speak formally on behalf of an applicant before the commission. Although this may not strictly be a “representation” of an applicant before his commission, which would strictly be prohibited, it could easily be misconstrued. The commissioner’s duty is to consider all the evidence presented and make a decision accordingly. Taking an advocacy position would destroy this objectivity and result in the member of the deliberative body giving evidence in the proceeding. One is not allowed to “step down” from the bench and put on a “citizen hat” in such circumstances.

#### **Scenario 4 Analysis – Planning Director**

The answer depends on the particular provisions of your ethics code. For example, nearly all codes which restrict post-government employment, as does the State’s, prohibit participation in a matter in which the employee was directly involved during his government employment. This is a bare minimum provision. Some codes go further, and prohibit employment (for a given period of time) if the matter was within the general area of responsibility of the employee during his term of employment. So, if Bob was the person who generally supervised the review of such applications, he might be prohibited for that given time period, even if he did not have anything to do with a particular matter.

It is difficult to restrict forever a former employee’s ability to conduct business before a former employer, particularly where the particular matter was not within the former employee’s purview. A brief “cooling off” period would be permissible, and should be restricted to representation of others, but not the employee himself.

If Smith is holding an “industry seat” on the commission, there is or should be less controversy.

#### **Scenario 5 Analysis –The Pub and the Mayor**

Ollie Owl’s generosity may be well-intentioned, but accepting that generosity will result in a violation of most ethics codes. The State code allows for food and beverages consumed in the presence of the donor, but it is a stretch to apply that provision to the owner, who may or not may not be present in the building, giving free food and beverages as a matter of course. The exception is intended to allow for those opportunities for luncheons and dinner meetings where business or related matters can be discussed, and by its nature limits the scope of the events as to time and opportunity; viz. isolated occasions. It is also likely that the practice would be *reasonably* perceived as an impropriety by the public.

Moreover, the Mayor accepting preferential seating treatment is a violation of the prohibition on using one’s position for personal benefit. *The Mayor should stand in line like everyone else!*

#### **Scenario 6 Analysis – Council Member Discipline Inquiry**

According to the National League of Cities (NLC), it is permissible for the council member to speak with the department director, but only to ascertain the fairness of the procedures involving the report. The NLC Report, *Standards of Conduct & Guidelines for Government Decision Makers*, provides, “Those who intervene should firmly, explicitly and unambiguously convey their limited purposes, to reduce the possibility of direct or indirect pressure on administrators . . . .”

Despite that analysis, however, such an inquiry is NOT recommended and could be unethical. *The person on the receiving end will view the call as an effort to influence her decision or the process, whether or not it is so intended and no matter how much of a disclaimer is made.* Moreover, many charters and codes prohibit such contacts by members of the local legislative bodies.

If the council also serves as the executive function, the inquiring member might, at some point, have a right to inquire, but that inquiry would come as part of a formal process and (most likely) after the fact of the discipline by the department head, but not preemptively as described here.

The matter is exacerbated if there is such a Personnel Review Board. Such boards are charged with hearing disciplinary appeals and such a call may be viewed also as interference with that process as well.

### **Scenario 7 Analysis – Sharpshooters**

These prizes are in all likelihood, acceptable. Also, in all likelihood, taxable. In analyzing this scenario, key factors are that the prizes were earned by virtue of applied skill through an objective competition. It would not matter if the prizes were sponsored by a supplier with whom the PD did business. On the other hand, sponsorship of a contest among the single department’s personnel only would not be allowed under such supplier sponsorship. Finally, if the receipt of the prizes would give to a “reasonable man” an appearance of impropriety, they should be refused. However, under that facts of this scenario, there is no ethics violation.

### **Scenario 8 Analysis – Road Trip!**

Under normal circumstances it is not necessary to see, three times, through three full events, the processes employed. Most event types have objective standards based on crowd size, type of event, and similar objective factors. Facilities may be assessed without an event on-going. Moreover, the appearance of impropriety in such an arrangement is palpable. A good ethics code will prohibit the acceptance of tickets for entertainment and sporting events (as generally required by State law), or subject them to strict and clearly established guidelines – if necessary for a business purpose.

How could this be handled differently? A full-facility pass for one event, accompanied by the facility manager or safety director, would allow you inspect the operation, before, during, and after the event, in detail, rather than just having a ticket to the event. Your work would be done during the event.

## **Scenario 9 Analysis – Business Lunch**

This scenario is not so unusual and really doesn't present too much of an ethical dilemma. With the caveat that ANYTHING which would actually impact negatively on an official's faithful performance or which an official knows was intended to do so is prohibited, Maryland ethics law allows food and beverage, consumed in the presence of the donor, as an exception to the gift prohibitions. Such luncheon and dinner meetings do allow officials to meet with constituents, business people, etc., in an atmosphere where interruptions are eliminated or reduced and a more relaxed atmosphere can exist.

There are always public perception issues and the official should consider them. Alternatives should be explored. For example, the official can suggest a more pedestrian fare. The official could pick up the whole tab or pay his own costs. He could suggest a non-dining meeting. In any event, disclosure would dispel a number of potential negative perceptions.

## **Scenario 10 Analysis - Confidentiality**

In many past classes, this issue has engendered significant discussion and heartfelt reaction from attendees.

Even though you may be an elected city commissioner and came by the information honestly, you do not have the right to waive the attorney-client privilege or otherwise disclose confidential information, even with the best of intentions. In the present case, the information constitutes personnel information and is subject to state non-disclosure laws. The information was also garnered from a disclosure made in accordance with attorney-client privilege and in a closed session of the commissioners, pursuant a vote to close taken by the body. Elected bodies act as a unit. This applies to legislative action as well as to matters of privilege.

The 'best of intentions' is immaterial. The privilege of a "body" belongs to the body as a whole and not to each individual member.

In this scenario, matter not barred from disclosure by other law may only be disclosed if the privilege and closed meeting protection is waived by an action of the body as a whole. The non-disclosure restrictions will also apply to any staff members who were included in the closed session.

Local codes should be reviewed and amended if needed to provide clarity on this point.