

Ethics for Clerks and Recordors

UMCA Conference 2018

Ethics

- the principles of conduct governing an individual or a group pertaining to right or wrong.

Ethics

- Ethics might mean something to one person and something different to another.
 - What does it mean professionally?

First Principles of Ethics

- We will go through the technical requirements of the statute, but fundamentally municipal ethics is about basic standards of honesty, integrity, and prudence
- As we talk about every individual rule, standard, or situation, remember to evaluate and understand that circumstance in the context of these basic ideas.
- The worst ethical decisions are made when we try to look for loopholes or figure out why we don't really have to follow a particular requirement

Can I be proud of this decision?

- The first basic question you should always ask yourself is this: can I be proud of this decision?
- If you're not proud of the way you handle a situation, you're probably doing it wrong.
- This is not an excuse to ignore technical requirements in the law, which should always be followed. It is a way to understand whether you're on the right track in determining how to respond to a potential issue or concern.

The Headline Test

- If the last question was “how does it feel?”, this question is “how does it look?”
- Sometimes there are situations where there is no technical conflict of interest but where people could perceive that you cannot be objective

February 27, 1989



Utah Municipal Officers' and Employees' Ethics Act

- Municipal Officers' and Employees' Ethics Act
 - UCA 10-3-13 et seq.

Utah Municipal Officers' and Employees' Ethics Act

- The purposes of this part are to establish standards of conduct for municipal officers and employees and to require these persons to disclose actual or potential conflicts of interest between their public duties and their personal interests.

Utah Municipal Officers' and Employees' Ethics Act

- “Municipal employee” means a person who is not an elected or appointed officer who is employed on a full- or part-time basis by a municipality or by a community reinvestment agency.
- “Elected Officer” means a person elected or appointed to the office of mayor

Utah Municipal Officers' and Employees' Ethics Act

- **10-3-1304 Use of office for personal benefit prohibited.**
- (1) As used in this section, "economic benefit tantamount to a gift" includes:
 - (a) a loan at an interest rate that is substantially lower than the commercial rate then currently
 - prevalent for similar loans; and
 - (b) compensation received for private services rendered at a rate substantially exceeding the fair
- market value of the services.
- (2) Except as provided in Subsection (4), it is an offense for an elected or appointed officer or
- municipal employee to:
- (a) disclose or improperly use private, controlled, or protected information acquired by reason of
- the officer's or employee's official position or in the course of official duties in order to further substantially the officer's or employee's personal economic interest or to secure special privileges or exemptions for the officer or employee or for others;
- (b) use or attempt to use the officer's or employee's official position to:
 - (i) further substantially the officer's or employee's personal economic interest; or (ii) secure special privileges for the officer or employee or for others; or
- (c) knowingly receive, accept, take, seek, or solicit, directly or indirectly, for the officer or employee or for another, a gift of substantial value or a substantial economic benefit tantamount to a gift that:
 - (i) would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties; or
 - (ii) the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken.

What if.....

- You learn at an executive staff meeting that a high profile business is considering locating in your City's downtown area. After the meeting, you purchase two vacant sites that are considered optimal locations for new development.
- You (reincarnated as a police officer) work extremely hard to investigate and solve a series of auto thefts. A grateful resident, without talking to you first, sends you four courtside Jazz tickets with a note that says "for a job well done".

Utah Municipal Officers' and Employees' Ethics Act

- (3) Subsection (2)(c) does not apply to:
- (a) an occasional nonpecuniary gift having a value of less than \$50;
- (b) an award publicly presented in recognition of public services;
- (c) any bona fide loan made in the ordinary course of business; or (d) a political campaign contribution.

What if.....

- The Utah Municipal Clerks Association presents you with a seven foot tall statue of yourself in recognition of your massive contributions to the profession.
- What if you could sell that statue for more than \$50?
- What if you receive a fruit basket from a court reporter company at Christmas?

Utah Municipal Officers' and Employees' Ethics Act

- **10-3-1305 Compensation for assistance in transaction involving municipality -- Public disclosure and filing required.**
- (1) As used in this section, "municipal body" means any public board, commission, committee, or
- other public group organized to make public policy decisions or to advise persons who make
- public policy decisions.
- (2) Except as provided in Subsection (6), it is an offense for an elected officer, or an appointed
- officer, who is a member of a public body to receive or agree to receive compensation for assisting any person or business entity in any transaction involving the municipality in which the member is an officer unless the member:
- (a) files with the mayor a sworn statement giving the information required by this section; and (b) discloses the information required by Subsection (5) in an open meeting to the members of
- the body of which the officer is a member immediately before the discussion.

Utah Municipal Officers' and Employees' Ethics Act

- (3) It is an offense for an appointed officer who is not a member of a public body or a municipal employee to receive or agree to receive compensation for assisting any person or business
- entity in any transaction involving the municipality by which the person is employed unless the
- officer or employee:
 - (a) files with the mayor a sworn statement giving the information required by this section; and (b) discloses the information required by Subsection (5) to:
 - (i) the officer or employee's immediate supervisor; and
 - (ii) any other municipal officer or employee who may rely upon the employee's representations
- in evaluating or approving the transaction.
- (4)
- (a) The officer or employee shall file the statement required to be filed by this section 10 days before the date of any agreement between the elected or appointed officer or municipal employee and the person or business entity being assisted or 10 days before the receipt of compensation by the officer or employee, whichever is earlier.
- (b) The statement is public information and shall be available for examination by the public.
- (5) The statement and disclosure shall contain:
 - (a) the name and address of the officer or municipal employee;
 - (b) the name and address of the person or business entity being or to be assisted or in which the appointed or elected official or municipal employee has a substantial interest; and
 - (c) a brief description of the transaction as to which service is rendered or is to be rendered and of the nature of the service performed or to be performed.
- (6) This section does not apply to an elected officer, or an appointed officer, who is a member of a public body and who engages in conduct that constitutes a violation of this section to the extent that the elected officer or appointed officer is chargeable, for the same conduct, under Section 76-8-105.

What if.....

- I'm a lawyer. Is it OK for me to assist a private client who is incorporating a business in West Valley City?
- What if I'm a lobbyist? Can I take a private client who would want me to lobby the City Council for some particular action?

Utah Municipal Officers' and Employees' Ethics Act

- **10-3-1306 Interest in business entity regulated by municipality -- Disclosure statement required.**
- (1) Every appointed or elected officer or municipal employee who is an officer, director, agent,
- or employee or the owner of a substantial interest in any business entity which is subject to the regulation of the municipality in which he is an elected or appointed officer or municipal employee shall disclose the position held and the nature and value of his interest upon first becoming appointed, elected, or employed by the municipality, and again at any time thereafter if the elected or appointed officer's or municipal employee's position in the business entity has changed significantly or if the value of his interest in the entity has increased significantly since the last disclosure.
- (2) The disclosure shall be made in a sworn statement filed with the mayor. The mayor shall report the substance of all such disclosure statements to the members of the governing body, or may provide to the members of the governing body copies of the disclosure statement within 30 days after the statement is received by him.
- (3) This section does not apply to instances where the value of the interest does not exceed \$2,000. Life insurance policies and annuities may not be considered in determining the value of any such interest.

Utah Municipal Officers' and Employees' Ethics Act

- **10-3-1307 Interest in business entity doing business with municipality -- Disclosure.**
- (1) Every appointed or elected officer or municipal employee who is an officer, director, agent, employee, or owner of a substantial interest in any business entity which does or anticipates doing business with the municipality in which he is an appointed or elected officer or municipal employee, shall publicly disclose to the members of the body of which he is a member or by which he is employed immediately prior to any discussion by such body concerning matters relating to such business entity, the nature of his interest in that business entity.
- (2) The disclosure statement shall be entered in the minutes of the meeting.
- (3) Disclosure by a municipal employee under this section is satisfied if the employee makes the
- disclosure in the manner required by Sections 10-3-1305 and 10-3-1306.

Utah Municipal Officers' and Employees' Ethics Act

- **10-3-1308. Investment creating conflict of interest with duties -- Disclosure.**

Any personal interest or investment by a municipal employee or by any elected or appointed official of a municipality which creates a conflict between the employee's or official's personal interests and public duties shall be disclosed in an open meeting as required by Section 10-3-1306.

When in doubt, disclose

- The requirements of the last three sections pertain to disclosures, not outright prohibitions on ownership interests
- Why would you take a chance or risk anything over a disclosure?
- Consider headline A: “City Clerk Discloses Potential Conflict of Interest”
- And headline B: “City Clerk Conceals Relationship With Lucrative Consulting Firm”

Utah Municipal Officers' and Employees' Ethics Act

- **10-3-1309. Inducing officer or employee to violate part prohibited.**

It is a class A misdemeanor for any person to induce or seek to induce any appointed or elected officer or municipal employee to violate any of the provisions of this part.

Utah Municipal Officers' and Employees' Ethics Act

- **10-3-1310 Penalties for violation -- Dismissal from employment or removal from office.**
- In addition to any penalty contained in any other provision of law, any person who knowingly and intentionally violates this part, with the exception of Sections 10-3-1306, 10-3-1307, 10-3-1308, and 10-3-1309, shall be dismissed from employment or removed from office and is guilty of:
 - (1) a felony of the second degree if the total value of the compensation, conflict of interest, or assistance exceeds \$1,000;
 - (2) a felony of the third degree if:
 - (a) the total value of the compensation, conflict of interest, or assistance is more than \$250 but not more than \$1,000; or
 - (b) the elected or appointed officer or municipal employee has been twice before convicted of violation of this chapter and the value of the conflict of interest, compensation, or assistance was \$250 or less;
 - (3) a class A misdemeanor if the value of the compensation or assistance was more than \$100 but does not exceed \$250; or
 - (4) a class B misdemeanor if the value of the compensation was \$100 or less.

Utah Municipal Officers' and Employees' Ethics Act

- **10-3-1311 Municipal ethics commission -- Complaints charging violations.**
- (1) A municipality may establish by ordinance an ethics commission to review a complaint against an officer or employee subject to this part for a violation of a provision of this part.
- (2)
 - (a) A person filing a complaint for a violation of this part shall file the complaint:
 - (i) with the municipal ethics commission, if a municipality has established a municipal ethics commission in accordance with Subsection (1); or
 - (ii) with the Political Subdivisions Ethics Review Commission in accordance with Title 63A, Chapter 15, Political Subdivisions Ethics Review Commission, if the municipality has not established a municipal ethics commission.
 - (b) A municipality that receives a complaint described in Subsection (2)(a) may:
 - (i) accept the complaint if the municipality has established a municipal ethics commission in accordance with Subsection (1); or
 - (ii) forward the complaint to the Political Subdivisions Ethics Review Commission established in Section 63A-15-201:
 - (A) regardless of whether the municipality has established a municipal ethics commission; or
 - (B) if the municipality has not established a municipal ethics commission.
- (3) If the alleged ethics complaint is against a person who is a member of the municipal ethics commission, the complaint shall be filed with or forwarded to the Political Subdivisions Ethics Review Commission.

Utah Municipal Officers' and Employees' Ethics Act

- **10-3-1312 Violation of disclosure requirements -- Penalties -- Rescission of prohibited transaction.**
- If any transaction is entered into in connection with a violation of Section 10-3-1305, 10-3-1306, 10-3-1307, or 10-3-1308, the municipality:
 - (1) shall dismiss or remove the appointed or elected officer or municipal employee who knowingly
- and intentionally violates this part from employment or office; and
 - (2) may rescind or void any contract or subcontract entered into pursuant to that transaction
- without returning any part of the consideration received by the municipality.

Some takeaways

- Ethics is an opportunity, not a liability. Standing up for ethical conduct encourages good business and good use of public money.
- Don't be scared that you will inadvertently end up in prison. Follow the rules, ask our two favorite questions ("how do I feel?" and "how will this look?") and you will be fine
- Use other resources and promote an atmosphere of compliance
- It's not worth it. Every single time you have an opportunity to take a shortcut, it's not worth it.