

ISAC NEW COUNTY OFFICERS' SCHOOL

Ethics by Megan Tooker

IA Ethics & Campaign Disclosure Bd

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Mission of the Ethics Board

- Foster the public trust and confidence in govt by ensuring the integrity of political campaigns, the ethical standards of public officials & employees of the executive branch and the oversight of executive branch lobbyists.
- Board enforces Iowa Code ch 68A (campaign finance, ch 68B (Govt ethics) & section 8.7 (agency gifts)

How do you define
ethics?

Ethics defined:

The rules of conduct that govern how a society differentiates between good and bad, right and wrong.

Why are ethics
important?

Ethical conduct

- Maintains the public's trust in government
- Ensures fairness and the appearance of fairness

Ethics Board's role with local govt

- Enforce Iowa Code chapter 68A (campaign finance)
- Provide advice to local govt officials & employees re: ethics laws in chapter 68B
- Board has the discretion to enter into an agreement with local govt authorizing the Board to enforce code of ethics
- Investigate complaints re: whether county redistricting plans were drawn for improper political purposes

Advising local govt officials re: ethics

- Individuals may request an advisory opinion from the Board – The Board's advice, if followed, constitutes a defense to a complaint
- The Board does not investigate complaints or penalize local govt for unethical behavior
- Complaints re: local govt violation of Chapter 68B should be filed with county attorney
- Complaint shall be referred to another county atty in the event of a personal/legal conflict

Ethics Rules that apply to local govt

- Iowa Code ch 68B
- Iowa Administrative Code ch 351 (the Ethics Board's administrative rules)
- The Ethics Board's advisory opinions
- Any ethics code adopted by the local govt
Note: a local code may mirror or be more stringent than 68B
- Model rules (e.g. League of Cities, ISAC)

How do you define a
conflict of interest?

Conflict of Interest defined:

- A conflict between the public obligations & private interests of a public official or employee
- i.e. competing interests

Actual conflict v. Perceived conflict

- Actual = an inability to be fair & impartial (whether favoritism or hostility)
- Perceived = perception that one cannot be fair & impartial

68B.2A: Conflicts of Interest

3 types of prohibited
outside employment
or activities

Type 1

- Outside employment or activity that involves using the government's resources (including time) to give the person or member of person's immediate family (i.e. spouse and dependent children) an advantage or monetary benefit that is not available to the general public
- Absolute prohibition

Type 2

- Outside employment or activity that involves the receipt of, promise of or acceptance of anything of value by the person or the person's immediate family from anyone other than the govt for the performance of the person's official duties
- Absolute prohibition

Type 3

- Outside employment or activity that is subject to the official control, inspection, review, audit or enforcement authority or the person during the performance of the person's duties of office or employment
- 2 options:
 - a. cease outside employment/activity OR
 - b. Publicly disclose conflict & refrain from action that would detrimentally affect or create a benefit

Official action defined

- Voting or influencing any vote
- Granting license or permit
- Determining the fact or law in a contested case or rulemaking proceeding
- Conducting any inspection or providing any official service or thing

GIFTS

Defined: anything of value in
return for which legal
consideration of equal or greater
value is not given & received

Legislative intent for gift restrictions

Public officials and employees should be extremely cautious about accepting a gratuity or favor especially from persons having substantial interest in the legislative, administrative or political actions of the official or employee

Iowa Code 68B.22, Iowa's gift law:

Unless there is a statutory exception, a
govt official/employee or that
person's immediate family (spouse
and dependant children) may not
accept or receive any gift or series of
gifts from a restricted donor

Restricted donor defined

- Someone who does business with or is seeking to do business with the donee's agency or office
- Will personally be (or an agent for that person) directly and substantially affected financially by the performance/nonperformance of the donee's official duty in a way that is greater than the effect on the public generally or a substantial class of persons

Restrict donor, cont.

- Is personally (or an agent for that person) who is the subject of or party to a matter which is pending before a *state* regulatory agency over which donee has discretionary authority as part of donee's official duties
- Is a lobbyist or a client of a lobbyist with respect to matters within the donee's jurisdiction (not applicable at county level)

Exceptions

The following gifts may be given from a restricted donor and received by a local govt official/employee or that person's immediate family

Exceptions

- Campaign contributions
- Informational material relevant to an employee or official's duties (pamphlets, books, reports, documents)
- Anything received from family members (related within 4th degree of kinship or marriage)
- Inheritance

Exceptions, cont.

- Anything available or distributed free of charge to general public
- Items received from a charitable, professional, educational or business organization to which the donee belongs as a dues-paying member if the items are given to all members of the organization

Exceptions, cont.

- Actual expenses of a donee (food, beverages, travel, lodging, registration) for a meeting which is given in return for participating in a panel or speaking engagement (limited to day(s) of speaking responsibilities)
- Plaques or items of negligible resale value given for recognition for public services of recipient

Exceptions, cont.

- Food & beverages provided at a meal that is part of a event or program at which recipient is being honored for public service
- Nonmonetary items with a value of \$3.00 or less that are received from any one donor during one calendar day
- Funeral flowers or memorials given to a church or nonprofit organization

Exceptions, cont.

- Gifts that are given to an official/employee for wedding or 25th or 50th wedding anniversary
- Actual registration costs for informational meetings or sessions which assist an official/employee in the performance of the person's official functions

Note: food, drink, lodging and travel are not registration costs; meetings or sessions which an official or employee attends for personal or professional licensing purposes do not qualify

Fixing an improper gift

- Donate gift to public body, or educational or charitable organization within 30 days
- Return the gift to restricted donor
- Pay for the gift (no longer a gift)
- Note: there is no “legitimate friends” exception

Restrictions on Honoraria

- Honoraria defined: payment of compensation or giving of anything of value to an official or employee in relation to a speaking engagement from a restricted donor
- Generally prohibited

Permissible honoraria from restricted donor

- Payment of actual expenses for registration, food, beverages, travel and lodging given in return for participation in a panel or speaking engagement at a meeting when expenses relate directly to day or days in which donee has presentation responsibilities
- Nonmonetary items govt official or employee donates within 30 days to public body, or bona fide educational or charitable organization

Permissible honoraria, cont.

- Payment made to govt official or employee for services rendered as part of a bona fide private business, trade or profession in which the official or employee is engaged if the payment is commensurate with actual services rendered and not being made because of govt official/employee but rather because of some special expertise or other qualification

Personal financial disclosure

- Local government officials and employees are NOT required to file personal financial disclosure statements with the Ethics Board
- Iowa Code § 68B.35

Use of Public Resources for a Political Purpose § 68A.505

A Government body shall not expend or permit the expenditure of public moneys for political purposes, including expressly advocating the passage or defeat of a ballot issue

Political purposes defined:

Express advocacy for or
against a clearly
identified candidate or
ballot issue

“Express advocacy” defined:

Advocating the election or defeat of one or more clearly identified candidates or the passage or defeat of one or more clearly identified ballot issues using explicit words that unambiguously indicate that the communication is recommending or supporting a particular outcome in the election w/ regard to any clearly identified candidate or ballot issue

Freedom of Speech

- Govt officials/employees may expressly advocate for or against candidates or ballot issues; just can't use govt resources
- A governing body may express an opinion on a ballot issues through the passage of a resolution or proclamation

Specific prohibitions

- Using govt resources to solicit or accept campaign contributions
- Using govt resources to solicit votes, engage in campaign work or poll voters on their preferences for candidates or ballot issues
- Using publicly owned vehicle to transport political materials, placing campaign signs on a publicly owned vehicle or traveling to campaign-related events in a publicly owned vehicle

Specific prohibitions, cont.

- Using public resources to produce and distribute communications that expressly advocate for/against ballot issues or candidates
- Placing campaign materials on public property including placement of campaign signs on public right-of-way

Permitted activities

- Any public resources that is open to a member of the general public to use for other purposes may be used for political purposes, including distribution of political materials on windshields of vehicles parked in public parking lots
- Using public resources for holding candidate debate or forum and the accompanying distribution of campaign materials on govt property so long as at least 2 candidates are invited to attend

Permitted activities, cont.

- A person may reimburse govt for use of public resource for political purposes so long as the use of resource was also for a public purpose or furthered a public interest. Reimbursement shall be for the actual costs of the public resource or be for the same amount charged to a person using public resource for any other purpose

Permitted activities, cont.

- Public resources may be used to produce and distribute communications that do not expressly advocate for/against candidate or ballot issue
- While performing official duties, public official or employee may wear clothes or political paraphernalia that expressly advocates. However, admin head of may enact internal policy that prohibits such conduct

Permitted activities, cont.

- Law enforcement may campaign (either in photographs or “live”) while in uniform unless govt enacts internal policy that prohibits campaigning while in uniform.
- Job titles may be used for political purposes

How to avoid unethical conduct

- Be familiar with applicable laws and rules
- Use common sense
 - a. Would it pass the “front page” test?
 - b. Would it pass the “hair on the back of your neck” test?
 - c. Would it pass the “stink” test?
- Adopt written policies & follow them

How to avoid unethical conduct, cont.

- Seek guidance
 - a. From the Ethics Board (Advisory Opinion)
 - b. From the Ethics Bd's legal counsel
 - c. From the County Attorney
- When in doubt, assume conduct is unethical and behave accordingly