

# Overview of APA and AICP Ethics Principles



Prepared by the Ethics Committee of the American Institute of Certified Planners

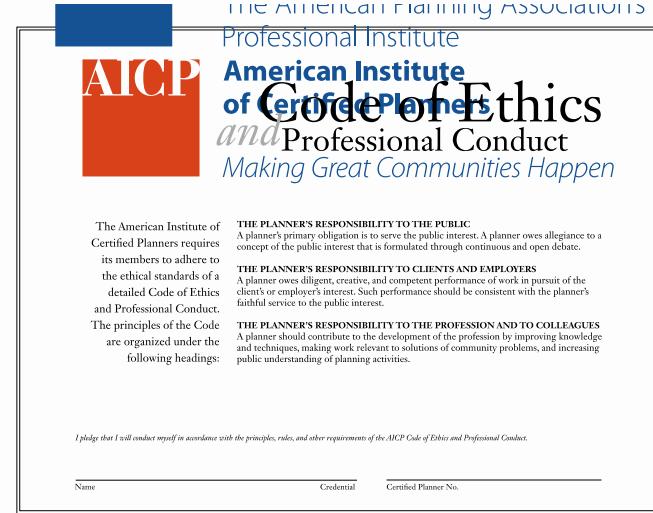
October 27, 2021 ,2pm

# Disclaimer

This portion of the session has been created to provide general education regarding the *AICP Code of Ethics*.

All certified planners should be aware that only the AICP Ethics Committee is authorized to give formal advice on the propriety of a planner's proposed conduct.

If you have a question regarding a situation in your own professional practice, you are encouraged to seek informal advice from the AICP Ethics Officer (ph: 312-786-6360; email: [ethics@planning.org](mailto:ethics@planning.org)).



The logo for the AICP Code of Ethics features the letters "AICP" in white on a red square, with the words "American Institute of Certified Planners and Professional Conduct Making Great Communities Happen" in blue and black text to the right. Above the logo, the text "THE AMERICAN PLANNING ASSOCIATION'S Professional Institute" is written in blue. Below the logo, there are three sections of text: "THE PLANNER'S RESPONSIBILITY TO THE PUBLIC", "THE PLANNER'S RESPONSIBILITY TO CLIENTS AND EMPLOYERS", and "THE PLANNER'S RESPONSIBILITY TO THE PROFESSION AND TO COLLEAGUES". At the bottom, there is a line for "Name" and "Certified Planner No." followed by a signature line.

*I pledge that I will conduct myself in accordance with the principles, rules, and other requirements of the AICP Code of Ethics and Professional Conduct.*

Name \_\_\_\_\_ Credential \_\_\_\_\_ Certified Planner No. \_\_\_\_\_

**This AICP Ethics Code certificate is available for downloading from [planning.org/ethics](https://planning.org/ethics). (See [https://planning-org-uploaded-media.s3.amazonaws.com/document/AICP-Code-of-Ethics-Certificate\\_Updated.pdf](https://planning-org-uploaded-media.s3.amazonaws.com/document/AICP-Code-of-Ethics-Certificate_Updated.pdf))**

# APA's Ethical Principles in Planning

Adopted in 1980 by the American Planning Association; revised in 1992

***Guidelines for advisors, advocates, and decision makers in the planning process***

## **1. Serve the public interest**

Provide accurate information, provide opportunity for all, protect natural and built environment, pay attention to long-range consequences of action, etc.

## **2. Maintain high standards of integrity and proficiency**

Provide independent judgment, disclose personal interests, seek no gifts or favors, avoid conflicts of interest, don't disclose confidential information, don't misrepresent facts, respect rights of all persons, etc.

## **3. Improve planning competence**

Provide high level of professionalism, commit no wrongful acts, contribute time for groups lacking planning resources, treat other professionals fairly, etc.

# AICP's Code of Ethics

Adopted in 1948 by the American Institute of Planners; rev. 1959, 1970, 1978, 1991, 2005, and 2016

## A. Aspirational Principles

*(See next slides)*

## B. Rules of Conduct

*(See next slides)*

## C. Advisory Opinions

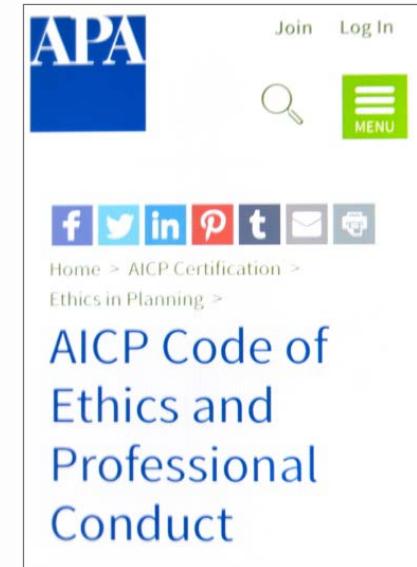
Informal Advice, Formal Advisory Opinions, Annual Report

## D. Complaints of Misconduct

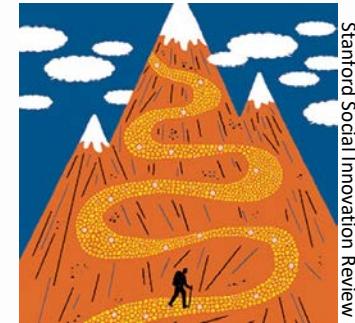
Filings, Preliminary Charge/Dismissal, Settlement, Decision, Appeal

## E. Discipline of Members

Confidential Letter, Public Censure, Suspension, Revocation



# Aspirational Principles *(the "shalls")*



## 1. Overall Responsibility to the Public

(Interrelatedness of decisions, Broad participation, Social justice, Fair dealings)

## 2. Responsibility to Our Clients and Employers

(Independent judgment, Accept decisions of client or employer, Avoid conflicts of interest)

## 3. Responsibility to Our Profession and Colleagues

(Professional integrity, Contribute to planning knowledge, voluntary activities, and others)

# Rules of Conduct

*(the "shall nots")*

26 rules to which planners can be held accountable. General topics:

- Abuse of position
- Conflicts of interest
- False or deceptive statements
- Honest and fair dealing
- Lack of cooperation
- Legal and ethical
- Loyalty to employer
- Private communication
- Respect for confidentiality



# Ethical Misconduct Cases in 2020

## Eight Cases Dismissed

No preliminary charge filed

## Six Cases Dismissed

After preliminary charge and response by planner

## Four Cases Settled

Agreements to cease misuses of the AICP credential

## Two Disciplinary Actions

One-Year Suspension for “wrongful conduct” involving emails and social media posts (Rule of Conduct #25)

Confidential Letter of Admonition for “wrongful conduct” related to plagiarism (Rule of Conduct #25)



Carol Hu, APA Image Library

# Ethics Topics in 2020

Based on misconduct cases and informal inquiries



*The most commonly cited Rules of Conduct were: #1 (accurate information) and #25 (wrongful conduct)*

# Cases of the Year

APA and its chapters offer more in-depth AICP ethics code training in their “Cases of the Year” Presentations.

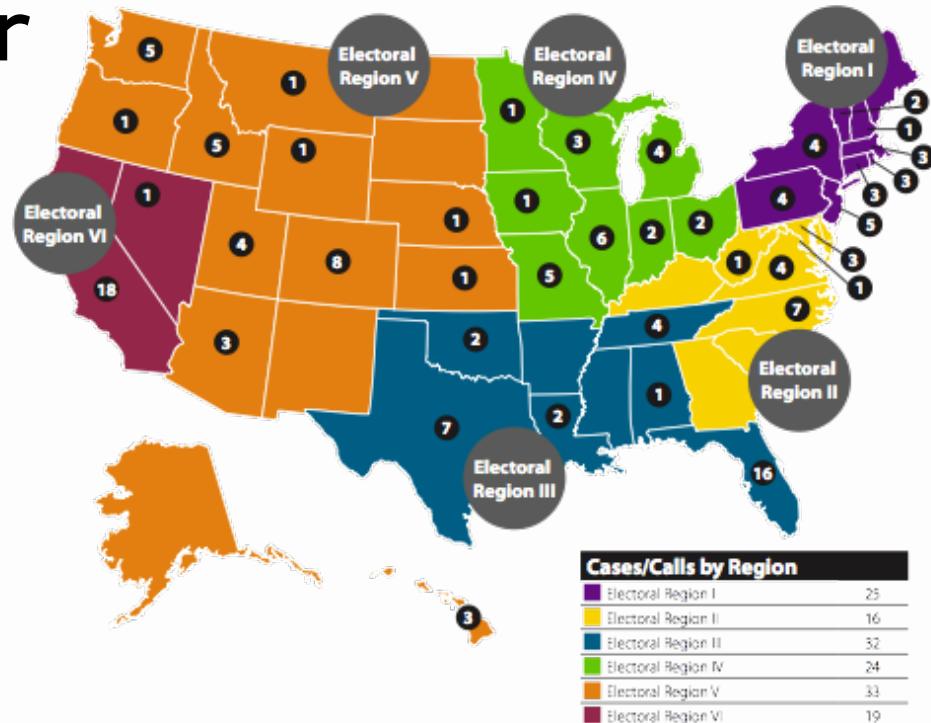
See:

<https://www.youtube.com/watch?v=ohJx2xyWwPE>

Or \$30 via APA Learn

## Ethics Cases/Calls (2020)—By States/Regions

(Note: If a state is not listed, it had no cases/calls in 2020)



# Final Note

For informal advice regarding ethical conduct, please contact the AICP Ethics Officer, Jim Peters, FAICP, at 312-786-6360 or [ethics@planning.org](mailto:ethics@planning.org). For more information about ethics, please visit [planning.org/ethics](http://planning.org/ethics)

## **AICP Ethics Committee**

Karen Wolf, FAICP, Chair

Valerie J. Hubbard, FAICP

Robert L. Barber, FAICP

Bonnie J. Johnson, FAICP, PHD

Michele S. Delisfort, AICP, PP

Kimberly Mickelson, AICP, JD

Staron Faucher, AICP

Erin Perdu, AICP



## American Planning Association

*Creating Great Communities for All*



**WHITEMAN  
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# Ethics Training for Planning and Zoning Board Members

**Robert A. Stout Jr.**

## October 27, 2021

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# Overview

- **General Municipal Law Requirements**
- **Model Code of Ethics**
- **Ethical Decision Making Process**
- **Case Studies/Hypotheticals**



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# What Are the Ethical Obligations of a Public Employee?

- Duties:
  - Fiduciary, loyalty and care
  - Oversight and accountability
  - Disclosure

# Fiduciary Duties of a Public Employee

A fiduciary duty is quite simply

- “An obligation to act in the best interest of another party.”
- It is a position of trust.
- One is prohibited from acting in a manner contrary to the best interests of the organization.
- What if there is not consensus on your fiduciary duty?

## Fiduciary Duties of a Public Employee (cont'd)

How do you determine what is in the Municipality's best interest?

- There are only two sources:
  - The enabling legislation
  - The Town's mission
- It can be difficult.

# Fiduciary Duties of a Public Employee (cont'd)

## What is the Mission?

- Zoning: Who do you listen to?
  - Home owners?
  - Developers?
- Sewer Districts:
  - Do you increase costs on homeowners? Businesses?

# Fiduciary Duties of a Public Employee (cont'd)

## Pursuing the Mission

- Who do you listen to in order to understand the mission?
  - Constituent
  - Rate payer
  - Politicians
  - Contractors
- You listen to all of them, but in the end, only one person defines the mission consistent with fiduciary duty, and exercises discretion:
  - **You**

# Fiduciary Duties of a Public Employee (cont'd)

## The Second Part

- You may have good intentions, but alone that is not enough to discharge your fiduciary duty.
  - You have to make informed decisions.
  - You have a duty not to defer.
  - You have a duty to inquire.
  - You have a duty to seek expert guidance in any new area.

# Fiduciary Duties of a Public Employee (cont'd)

## Independence

- Independence is the foundation of a fiduciary duty.
- If your judgment is, or could be, influenced by a factor (fear, friendship, personal gain), you cannot appropriately exercise your fiduciary duty.

# Fiduciary Duties of a Public Employee (cont'd)

## Independence

- How can you become independent?
  - Can't use position for gain of yourself or anyone close to you.
  - Can't disclose confidential information.
  - Should not have an interest in any business or activity which stands to gain or has a conflict with the Town.
  - Essentially, it begins with common sense.
  - Its underpinning is disclosure.

# Identifying and Avoiding Conflicts of Interest

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# Ethics Generally

- Purposes:
  - Protect the public from non-compliance and maintain public trust in government
  - Protect public officers from unjustified attacks
- GML Article 18 in a nutshell:
  - Regulates conflicts of interest by prohibiting *municipal officers and employees* from having *an interest* in any *contract* with the municipality over which they have control.
  - When can an officer/employee do business with a municipality that he or she serves?
- State law requires that every county, city, town, village, school district and fire district adopt a code of ethics ***at least as stringent*** as GML Article 18. Therefore, compliance with Article 18 does not necessarily mean there is compliance with local code!
- Your Municipal Code of Ethics supplements, but does not replace, the requirements of State law.

- GML Article 18 regulates:
  - Conflicts of interest by prohibiting ***municipal officers and employees*** from having ***an interest*** in any ***contract*** with the municipality over which they have control.
  - What does this mean?
    - Generally, unless an exception applies, a municipal officer/employee is prohibited from having an interest in a contract when that person has certain official powers or duties relating to the contract.

# Five Step Analysis for Determining if a Conflict Exists

1. Is the individual a "municipal officer or employee"?
2. Is there is a "contract" with the municipality?
3. Does the officer / employee have an "interest" in that contract?
4. Does the officer / employee have the requisite power or duty under section 801?
5. Is the officer / employee covered by any of the exceptions in sections 801 or 802.

# Determining if a Conflict Exists

- If elements **one through four** are all satisfied and none of the exceptions apply, then the contract is prohibited under section 801.
- If one or more of the exceptions apply, then the contract is not prohibited; disclosure, however, may be mandated under section 803, and recusal may be required under the common law or advisable as a matter of common sense.

# Conflicts of Interest Prohibited

- Cannot have an **interest** in any **contract** with the municipality when you have the power or duty to
  - (a) negotiate, prepare, authorize or approve the contract or authorize or approve payment under it
  - (b) audit bills or claims under the contract, or **(From GML 801)**
  - (c) appoint an officer or employee who has any of the powers or duties set forth above **(From GML 801)**
- The existence, not the exercise of any of the above powers can give rise to an interest – check enactment that created position, job description etc....
- “Interest” means a direct or indirect pecuniary or material benefit accruing to a municipal officer or employee as the result of a contract with the municipality which such officer or employee serves. For the purposes of this article a municipal officer or employee shall be deemed to have an interest in the contract of (a) his spouse, minor children and dependents, except a contract of employment with the municipality which such officer or employee serves, (b) a firm, partnership or association of which such officer or employee is a member or employee, (c) a corporation of which such officer or employee is an officer, director or employee and (d) a corporation any stock of which is owned or controlled directly or indirectly by such officer or employee.

# Conflicts of Interest Prohibited

- **(GML 800) “Contract”** means any:
  - claim, account or demand against or agreement with a municipality, express or implied
  - includes the designation of a depository of public funds and the designation of a newspaper
    - i.e., an official newspaper for the publication of any notice, resolution, ordinance
    - The Comptroller has found that certain actions do not constitute contracts under Article 18 (i.e. land use actions such as zoning changes, variances, site plan and subdivision approvals and building permits.

# Relevant Exceptions Under State Law

Generally address situations where the officer/employee does not have a material financial stake in the transaction or an opportunity to exert improper influence, or where the transaction is otherwise in the public interest.

- Where an interest is prohibited solely because of your position with the municipality, an exception exists where
  - your pay as employee of the firm will not be directly affect by position; and
  - your duties as employee of the firm do not directly involve the procurement, preparation or performance of the contract
- Designating a newspaper for the publication of any notice, resolution, ordinance or other proceeding where such publication is required or authorized by law.
- A contract in which you have an interest in, if the contract was entered into before you were elected or appointed, but no renewals of the contract
- A contract with a corporation in which you are a stock holder so long as your interest in that corporation is less than 5% of the outstanding stock.
- A contract in you have an interest in if the total value does not exceed the \$750 in the fiscal year.

# Relevant Exceptions Under State Law cont'd

- Sale of property to municipality?
  - Needs approval of the Supreme Court
- Acquisition of Real property by eminent domain
- A contract with a not-for-profit organization
- Where the member of the governing body or board is elected and serves without salary
- Purchases less than five thousand dollars in the aggregate in one fiscal year
- Purchases or public work is approved by resolution of the body or board by the affirmative vote of each member of the body or board except the interested member who shall abstain
- There are a total of 15 exceptions in § 802

# Other Exceptions? No!

- The Comptroller's office has identified certain scenarios that are the subject of frequent inquiry. In each instance, exceptions are not allowed.
  - Competitive bids or RFPs
  - Disclosure requirements
  - Abstention or recusal
  - Emergencies

If an officer/employee has an interest in a contract, and has the identified powers and duties and none of the exemptions apply, the interest in the contract is prohibited.

## See Also, Model Code, Section 4

Prohibition on use of municipal position for personal or private gain.

No municipal officer or employee shall use his or her municipal position or official powers and duties to secure a financial or material benefit for himself or herself, a relative, or any private organization in which he or she is deemed to have an interest.

Pause, Consider, Ask yourself

# Recusals and Abstentions

- The Model Code of Ethics contains a recusal and abstention requirement:  
*“No municipal officer or employee may participate in any decision or take any official action with respect to any matter requiring the exercise of discretion, including discussing the matter and voting on it, when he or she knows or has reason to know that the action could confer a direct or indirect financial or material benefit on himself or herself, a relative, or any private organization in which he or she is deemed to have an interest.”*

However, recusal and abstention ARE NOT exceptions to the prohibition against having a conflict of interest. Recusals and abstentions should be followed when a conflict is otherwise permitted to exist because of an express exemption in state law.

For Example:

Member of board of fire commissioners of a fire district within a county of more than 200,000 who is an officer and owner of one third of the stock of a corporation would have a prohibited interest in a contract for snow plowing and lawn maintenance between the fire district and the corporation, even if the fire district solicits bids for the work, the corporation is the sole bidder, the commissioner recuses himself from discussions about the contract and abstains from voting on matters relating to it.

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# Model Code – Recusals

## What Happens?

- In the event that this section prohibits a municipal officer or employee from exercising or performing a power or duty:
  - (1) if the power or duty is vested in a municipal officer as a member of a board, then the power or duty shall be exercised or performed by the other members of the board; or
  - (2) if the power or duty that is vested in a municipal officer individually, then the power or duty shall be exercised or performed by his or her deputy or, if the officer does not have a deputy, the power or duty shall be performed by another person to whom the officer may lawfully delegate the function.
  - (3) if the power or duty is vested in a municipal employee, he or she must refer the matter to his or her immediate supervisor, and the immediate supervisor shall designate another person to exercise or perform the power or duty.

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# Recap – Conflict Analysis

- **Five-step analysis for determining whether a conflict exists:**
  - the individual is a "municipal officer or employee";
  - there is a "contract" with the municipality;
  - the officer or employee has an "interest" in that contact;
  - the officer or employee has the requisite power or duty under section; and
  - the officer or employee is covered by any of the exceptions under law.
- If elements one through four are all satisfied and none of the exceptions apply, then the contract is prohibited under the law.
- If one or more of the exceptions apply, then the contract is not prohibited; disclosure, however, may be mandated, and recusal may be required under the common law or advisable as a matter of common sense.

# Disclosure of Interest

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# Disclosure of Interest

- If you have or will have an interest in any actual or proposed contract, or agreement with the municipality, you must:
  - publicly disclose the nature and extent of such interest in writing to the governing body as soon you have the knowledge that interest.
  - The written disclosure must be made part of and set forth in the official record of the proceedings of that body.
- Disclose... even if one of the exceptions under State Law applies, disclose to Board of Ethics.

# Disclosure of Interest

## Model Code

Whenever a matter requiring the exercise of discretion comes before a municipal officer or employee, either individually or as a member of a board, and disposition of the matter could result in a direct or indirect financial or material benefit to himself or herself, a relative, or any private organization in which he or she is deemed to have an interest, the municipal officer or employee shall disclose in writing the nature of the interest.

The disclosure shall be made when the matter requiring disclosure first comes before the municipal officer or employee, or when the municipal officer or employee first acquires knowledge of the interest requiring disclosure, whichever is earlier.

In the case of a person serving in an elective office, the disclosure shall be filed with the governing board of the municipality. In all other cases, the disclosure shall be filed with the person's supervisor or, if the person does not have a supervisor, **the disclosure shall be filed with the municipal officer, employee or board having the power to appoint to the person's position.**

In addition, in the case of a person serving on a municipal board, a copy of the disclosure shall be filed with the board. Any disclosure made to a board shall be made publicly at a meeting of the board and must be included in the minutes of the meeting.

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# Disclosure of Interest

## Model Code - Exceptions

*Recusal and abstention shall not be required with respect to any matter:*

- (1) which comes before a board when a majority of the board's total membership would otherwise be prohibited from acting by section 6 of this code;*
  
- (2) which comes before a municipal officer when the officer would be prohibited from acting by section 6 of this code and the matter cannot be lawfully delegated to another person.*

# Effect of Violating the Law

- § 804--Any contract willfully entered into by or with a municipality in which there is an interest prohibited by this article **shall be null, void and wholly unenforceable**
  - No payment is allowed to be made on the contract
- § 805—Any municipal officer or employee who willfully and knowingly violates the foregoing provisions of this article **shall be guilty of a misdemeanor.**
- Model Code of Ethics: Any municipal officer or employee who violates this code **may be censured, fined, suspended or removed from office or employment in the manner provided by law.**

# Other Prohibited Conduct

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## § 805-a— Certain Actions Prohibited

### Cannot-

- (A) Solicit any gift, accept or receive any gift over \$75 in value, directly or indirectly, where:
  - (1) it could reasonably be inferred that the gift was intended to influence the receiver, or
    - Gift = money, loans, services, travel, hospitality, entertainment, thing or promise, or in any other form
  - (2) could reasonably be expected to influence the receiver in the performance of his or her official duties or
  - (3) was intended as a reward for any official action on his part;
- Note: The Model Code of Ethics has an annual aggregate limit (as opposed to a single gift limit) of \$75.

# Model Code

## What is a Gift?

For purposes of this section, a “gift” includes anything of value, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form. The value of a gift is the gift’s fair market value, determined by the retail cost of the item or a comparable item. The fair market value of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit is the face value of the ticket, or the actual cost to the donor, whichever is greater. Determination of whether multiple gifts from a single donor exceed seventy-five dollars must be made by adding together the value of all gifts received from the donor by an officer or employee during the twelve-month period preceding the receipt of the most recent gift.

A gift to a municipal officer or employee is presumed to be intended to influence the exercise or performance of his or her official powers or duties when the gift is from a private person or organization that seeks municipal action involving the exercise of discretion by or with the participation of the officer or employee.

A gift to a municipal officer or employee is presumed to be intended as a reward for official action when the gift is from a private person or organization that has obtained municipal action involving the exercise of discretion by or with the participation of the officer or employee **during the preceding twelve months.**

# Model Code

## What is not a prohibited gift?

- (1) gifts made to the municipality;**
- (2) gifts from a person with a family or personal relationship with the officer or employee when the circumstances make it clear that the personal relationship, rather than the recipient's status as a municipal officer or employee, is the primary motivating factor for the gift;**
- (3) gifts given on special occasions, such as marriage, illness, or retirement, which are modest, reasonable and customary;**
- (4) unsolicited advertising or promotional material of little intrinsic value, such as pens, pencils, note pads, and calendars;**
- (5) awards and plaques having a value of seventy-five dollars or less which are publicly presented in recognition of service as a municipal officer or employee, or other service to the community; or**
- (6) meals and refreshments provided when a municipal officer or employee is a speaker or participant at a job-related professional or educational conference or program and the meals and refreshments are made available to all participants.**

## § 805-a– Certain Actions Prohibited

### Cannot-

- disclose confidential information acquired in the course of your official duties or use such information to further personal interests.
  - Consider – was something submitted under a claim of FOIL exemption?
- receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency of which he is an officer, member or employee or of any municipal agency over which he has jurisdiction or to which he has the power to appoint any member, officer or employee; or
- receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any agency of his municipality, whereby his compensation is to be dependent or contingent upon any action by such agency with respect to such matter, provided that this paragraph shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.

**In addition to any penalty contained in any other provision of law, any person who shall knowingly and intentionally violate this section may be fined, suspended or removed from office or employment in the manner provided by law.**

# Examples of Prohibited Actions

- Donations received by a municipal officer to pay legal fees incurred in pursuing a court proceeding against another city official are “gifts” subject to the restrictions of section 805-a (NY Op. Attorney General No. 05-10).
- A town planning board member who is also a geologist in the private sector may not be compensated or enter into an agreement to be compensated for soil borings on a project before the planning board (NY Op. Attorney General No. 95- 14).
- The chair of the planning board, who is employed by a real estate company that would receive business if a subdivision application is approved, should not participate in the consideration of the application (NY Op. Attorney General No. 86-54).
- A licensed architect who sits on a zoning board should not represent persons making their initial application before the local building department (NY Op. Attorney General No. 94-51).

# Disclosure in Certain Applications – GML 809

1. Every application, petition or request submitted for a variance, amendment, change of zoning, approval of a plat, exemption from a plat or official map, license or permit, pursuant to the provisions of any ordinance, local law, rule or regulation constituting the zoning and planning regulations of a municipality **shall state the name, residence and the nature and extent of the interest of any state officer or any officer or employee of such municipality or of a municipality of which such municipality is a part, in the person, partnership or association making such application, petition or request (hereinafter called the applicant) to the extent known to such applicant.**
2. For the purpose of this section an officer or employee shall be deemed to have an interest in the applicant when he, **his spouse, or their brothers, sisters, parents, children, grandchildren, or the spouse of any of them**
  - (a) is the applicant, or
  - (b) is an officer, director, partner or employee of the applicant, or
  - (c) legally or beneficially owns or controls stock of a corporate applicant or is a member of a partnership or association applicant, or
  - (d) is a party to an agreement with such an applicant, express or implied, whereby he may receive any payment or other benefit, whether or not for services rendered, dependent or contingent upon the favorable approval of such application, petition or request.
3. In the county of Nassau the provisions of subdivisions one and two of this section shall also apply to a party officer. "Party officer" shall mean any person holding any position or office, whether by election, appointment or otherwise, in any party as defined by subdivision four of section two of the election law.
4. Ownership of less than five per cent of the stock of a corporation whose stock is listed on the New York or American Stock Exchanges shall not constitute an interest for the purposes of this section

# Model Code of Ethics

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# Model Code of Ethics

Municipalities are required to adopt codes of Ethics.

For the purposes of this overview, the Model Code of Ethics is utilized. Check your Code!

Your Local Code is intended to apply standards of conduct with respect to matters not covered by State Law.

# Financial Disclosure

## Town Code of Ethics Requirements

Not in Model Code, but some municipalities have adopted broad financial disclosure requirements.

# Prohibition Against Using Position for Personal or Private Gain

Officers and employees of the [insert name of municipality] hold their positions to serve and benefit the public, and not for obtaining unwarranted personal or private gain in the exercise and performance of their official powers and duties. The [insert name of municipal governing body] recognizes that, in furtherance of this fundamental principle, there is a need for clear and reasonable standards of ethical conduct. This code of ethics establishes those standards.

- Examples:
  - Use of Town property for personal or private use;
  - Limiting travel expenses to that which is necessary

# Use of Municipal Resources

(a) Municipal resources shall be used for lawful municipal purposes. Municipal resources include, but are not limited to, municipal personnel, and the municipality's money, vehicles, equipment, materials, supplies or other property.

(b) No municipal officer or employee may use or permit the use of municipal resources for personal or private purposes, but this provision shall not be construed as prohibiting:

- (1) any use of municipal resources authorized by law or municipal policy;
- (2) the use of municipal resources for personal or private purposes when provided to a municipal officer or employee as part of his or her compensation; or
- (3) the occasional and incidental use during the business day of municipal telephones and computers for necessary personal matters such as family care and changes in work schedule. (c) No municipal officer or employee shall cause the municipality to spend more than is reasonably necessary for transportation, meals or lodging in connection with official travel.

# Interests in Conflict with Official Duties

No municipal officer or employee may acquire the following investments:

- (1) investments that can be reasonably expected to require more than sporadic recusal and abstention under section 6 of this code; or
- (2) investments that would otherwise impair the person's independence of judgment in the exercise or performance of his or her official powers and duties.

(b) This section does not prohibit a municipal officer or employee from acquiring any other investments or the following assets:

- (1) real property located within the municipality and used as his or her personal residence;
- (2) less than five percent of the stock of a publicly traded corporation; or
- (3) bonds or notes issued by the municipality and acquired more than one year after the date on which the bonds or notes were originally issued.

# Private Employment in Conflict with Official Duties

No municipal officer or employee, during his or her tenure as a municipal officer or employee, may engage in any private employment, including the rendition of any business, commercial, professional or other types of services, when the employment:

- (a) can be reasonably expected to require more than sporadic recusal and abstention pursuant to section 6 of this code;
- (b) can be reasonably expected to require disclosure or use of confidential information gained by reason of serving as a municipal officer or employee;
- (c) violates section 805-a(1)(c) or (d) of the General Municipal Law; or
- (d) requires representation of a person or organization other than the municipality in connection with litigation, negotiations or any other matter to which the municipality is a party.

# Future Employment

- (a) No municipal officer or employee may ask for, pursue or accept a private post-government employment opportunity with any person or organization that has a matter requiring the exercise of discretion pending before the municipal officer or employee, either individually or as a member of a board, **while the matter is pending or within the 30 days following final disposition of the matter.**
- (b) **No municipal officer or employee, for the two-year period after serving as a municipal officer or employee, may represent or render services to a private person or organization in connection with any matter involving the exercise of discretion before the municipal office, board, department or comparable organizational unit for which he or she serves.**
- (c) **No municipal officer or employee, at any time after serving as a municipal officer or employee, may represent or render services to a private person or organization in connection with any particular transaction in which he or she personally and substantially participated while serving as a municipal officer or employee.**

# Political Solicitations

## **Political Solicitations.**

- (a) No municipal officer or employee shall directly or indirectly to compel or induce a subordinate municipal officer or employee to make, or promise to make, any political contribution, whether by gift of money, service or other thing of value.
- (b) No municipal officer or employee may act or decline to act in relation to appointing, hiring or promoting, discharging, disciplining, or in any manner changing the official rank, status or compensation of any municipal officer or employee, or an applicant for a position as a municipal officer or employee, on the basis of the giving or withholding or neglecting to make any contribution of money or service or any other valuable thing for any political purpose.

# Confidential Information

No municipal officer or employee who acquires confidential information in the course of exercising or performing his or her official powers or duties may disclose or use such information unless the disclosure or use is required by law or in the course of exercising or performing his or her official powers and duties.

# Board of Ethics

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# Formed Pursuant to GML 808

County or Municipal

Such Boards may:

Render advisory opinions to officers and employees.

Seek legal counsel.

Make recommendations with respect to the drafting and adoption of a code of ethics or amendments thereto upon the request of the governing body of any municipality in the county.

# Frequently Cited Cases

- Tuxedo Conservation & Taxpayers Ass'n v. Town Board of Tuxedo
  - 3-2 vote for a development project, where the decisive vote was made by a Town Board member who was also a vice present of an ad agency that had for one of its clients, the parent company of the developer
  - The 2d Dep't, relying on section 809, invalidated the town board resolution approving the project .
  - Although section 809 requires only disclosure, not recusal, courts have extended the section to mandate recusal as well, even by classes of individuals not encompassed within the section.

# Frequently Cited Cases

- Zagoreos v. Conklin

- At issue here pertained to the efforts of Orange and Rockland Utilities, Inc. (O & R) to obtain municipal approval for the construction of several structures necessary to effectuate conversion of two oil-burning generating units into coal-burning units.
- The proposed required use and area variances from the ZBA and a large scale development permit from the town board. However, several employees of O & R were members of these public bodies.
- The ZBA approved the application by a five-to-two vote. Several residents then commenced an article 78 proceeding to challenge the issuance of the variances. The vote was set aside on the ground that two of the five ZBA members who had voted in favor of O & R's application were employees of O & R and thus the proceeding was tainted by an improper conflict of interest, even though it was known that certain members were O&R employees.
- The Planning Board vote was set aside for the same reasons.

# Case Studies

- *The Town needs an environmental review for a park project. After competitive bidding, the contract was awarded to a firm whose primary stockholder (who owns 33% of the firm's stock) is one of the Town Board members. The Board member did not participate in the Town board's discussion and vote on the contract and will not perform any of the actual work under the contract.*
- *Does the board member have a prohibited interest in the contract? Why or why not? If the board member does not have a prohibited interest, are there any other issues with which the board member should be concerned?*

# Case Studies

- This is an example of prohibited interest in a contract.
- According to the facts, there is a “contract” between the Town and the engineering firm.
- The Town board member is deemed to have an “interest” in the contract because he is a stockholder in the engineering firm.
- As a Town Board member, he has Section 801 powers and duties in relation to the contract (e.g., the power to approve the contract and to audit claims under the contract).
- No exceptions apply.
  - This is not a pre-existing contract.
  - The trustee owns one-third of the firm’s stock – well above the 5% that would be considered a minimal holding.
  - Because the trustee’s interest arises from his status as a stockholder, the fact that he is not performing any of the actual work under the contract is irrelevant.
- Therefore, in this instance, the board member’s interest in the contract is prohibited because he has Section 801 powers and duties and none of the statutory exceptions apply to the interest.
  - Even if the board member abstained from participating in the board’s discussions or decisions on this contract, the trustee’s interest in the contract would still be prohibited. It is the existence of Section 801 powers and duties, not whether they are exercised in a particular instance, that causes an interest in a contract to be prohibited. Moreover, there is no statutory exception for recusal and abstention.

# Case Studies

- *A Town Board member owns a food service business. Proposed zoning changes will broaden the rights of similar vendors and could negatively affect the business owned by the board member.*
- *Is there a conflict issue under the GML? Why or why not? Are there any other issues with which the village should be concerned?*

# Case Studies

- The Comptroller's Office has concluded that land use actions, such as zoning changes, are not "contracts" within the meaning of Article 18. Because there is no contract, the village trustee does not have a prohibited interest in a contract with the village.
- **Other Issues to Consider:**
  - What about violations under local code?
- *Remember: Just because there is no violation under State law, does not mean there is no violation under the local code*
- To avoid even an appearance of impropriety, you should:
  - publicly disclose the underlying factual circumstances.
  - if the negative impact of the zoning change on trustee's business is not merely speculative and is not trivial, you should not participate in the discussion and voting on the zoning change.



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OSTERMAN  
& HANNA LLP  
ATTORNEYS AT LAW

# Comments or Questions?

Contact:

Rob Stout [RStout@woh.com](mailto:RStout@woh.com)



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