

2007 GREAT LAKES PARK TRAINING INSTITUTE

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“Personal Accountability & Ethics”

Lynn Jondahl

Chair, Michigan State Board of Ethics

PRESENTATION OUTLINE

DEFINITION OF ETHICS: “The rules or standards governing the conduct of a person, profession, group or institution.”

POLITICS AND ETHICS: Politics is the mechanism people use to live together. Ethics is the concern for wholeness or integrity. How we treat our institutions. How we behave – conduct ourselves in this process of living together. The elements of ethics are: **Equity; Transparency; Honesty; Accountability.** I like the summary “Five Principles of Public Service Ethics: from the Josephson Institute of Ethics.

1. Public office is a trust; use it only to advance public interests, not personal gain.
2. Make decisions on the merits, free from partiality or prejudice and unimpeded by conflicts of interest.
3. Conduct government openly, efficiently and honorably so the public can make informed judgments and hold public officials accountable.
4. Honor and respect democratic principles; observe the letter and spirit of laws.
5. Safeguard public confidence in the integrity of government by avoiding appearances of impropriety and conduct unbecoming a public official.

Many professions and entities translate these principles into extensive laws, codes, rules and regulations. Do they need to be written and enacted? Not necessarily but it doesn't hurt and may help.

And ethical political system: not a state to be reached but a process of decision-making in which the public business is carried on in such a way as to be most **ACCESSIBLE** to people of all races, all ages, both sexes and every economic level; **OPEN** to creative ideas and solutions from any sources; **RESPONSIVE** to the desires of the majority as well as the rights and needs of the minority; and **VIABLE**, so as to make the system work for all people – not just the most articulate.

The test of whether our government is marked by integrity is whether it is **ACCESSIBLE**, **OPEN**, **RESPONSIVE** and **VIABLE**. The only guarantees of integrity are the self-correcting advocacy of all interests, effectively being voiced and acted out.

HOW GOVERNMENTAL AGENCIES GUIDE ETHICAL BEHAVIOR.

- A. Governmental agencies may follow some basic statutory guidelines as to proper ethical behavior.

1. These statutory guidelines typically only address very obvious improper behavior. Don't address abuse of the system for personal gain.
 2. Elected governmental officials may be subject to stricter ethical guidelines than apply to governmental staff.
- B. Governmental agencies also may have internal rules and procedures that provide ethical guidelines to employees.
1. These rules and procedures are not designed to be all-inclusive. General rather than specific.
- C. Governmental employees often must base their ethical decisions on personal judgment.
1. It is important that entry level employees discuss potential ethical challenges with their superiors for advice.
 2. As a general rule, all governmental employees should not engage in any behavior that would cause them discomfort if that behavior was reported the next day in their local newspaper or they were describing it to their children.

ONE STATE'S STATUTORY SYSTEM OF ETHICS. Michigan Ethics Act, Public Act 196 of 1973. Created State Board of Ethics with jurisdiction over classified and unclassified employees of the executive branch and persons appointed by the governor or other executive department officials.

Ethics Act defines seven standards of unethical behavior over which the Board's advisory and investigatory power can be exercised.

1. Unauthorized disclosure of confidential information.
2. Representation of personal opinion as that of government agencies.
3. Use of government resources for personal gain or benefit.
4. Solicitation or acceptance of gifts or loans.
5. Use of official position or confidential information for personal profit or financial benefit.
6. Engaging in employment or rendering service which is incompatible with performance of official duties.
7. Participation in regulatory or supervisory functions over a business entity in which the officer or employee has a financial interest or personal interest.

This is as close to a definition of unethical behavior or action as Michigan public employees are given in the law that creates the State Ethics Act and the Board of Ethics which implements the Act.

Legislators and executive colleagues over the years have spelled out – in a variety of specific laws - definitions of acceptable and unacceptable behavior in a variety of public

service situations. Lobby Act; Incompatible Public Offices Act; Conflict of Interest Act; Contracts of Public Servants with Public Entities Act; Campaign Finance Act. Also a long history of gubernatorial executive orders and directives and Civil Service Commission Rules that have elaborated of emphasized or made more specific the commitment to ethical behavior in public service.

Comprehensive overview of ethics from Executive Order 3 of 1966, signed by Michigan Governor Romney, entitled *Standards of Conduct for State Employees*. His declaration of policy and description of the responsibilities of public employment. “The objectives and the following standards of conduct are to maintain an impartial administration of the state government and to maintain public confidence in government. Devotion to the public trust is an essential part of the obligation of public service. Individuals in state employment are trustees of an important branch of our system of government in which the people must be able to place their absolute trust; for the preservation of their welfare; their safety and all in which they believe.

“State employees must avoid all situations where prejudice, bias, or opportunity for personal gain could influence their decisions. Employees must equally avoid that which suggests favoritism or personal gain as the motivating force in the conduct of state government.”

REVIEW OF CASE STUDIES TO RESPOND TO SPECIFIC ETHICAL DILEMMAS.

Great Lakes Park Training Institute

February 22, 2007

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Ethical Issues Case Studies

Ethical Issue #1

Foster Friess, a wealthy manager of a multi billion dollar mutual fund loves music, but strongly believes that government agencies should not subsidize the arts. “Why should the single mother who makes \$6 an hour as a clerk be subsidizing ... my seats at the symphony through the local, state, and federal taxes taken out of her paycheck”, asks Mr. Friess. Recently Mr. Friess offered a donation of \$40,000 to the Grand Teton Music Festival in Jackson Hole, Wyoming, which has an annual budget of \$1.2 million, on the condition that the Festival not accept a grant of \$10,950 from the National Endowment for the Arts, an agency of the federal government.

Assume you are on the Board of Directors of the Grand Teton Music Festival. Do you vote to accept or reject Mr. Friess’s offer? If so, why? If not, why not?

Ethical Issue #2

Bill Marx is a leading real estate developer in Urban Township. The Township Board currently is debating a resolution that would severely limit new residential construction in the township due to environmental concerns. The Board members are facing reelection in three months. Mr. Marx approaches Mr. Olson, the current elected township supervisor. Mr. Olson is thought to be leaning toward supporting the restriction in new residential construction. Mr. Marx asks Mr. Olson to oppose the resolution and then states that if Mr. Olson votes in favor of the resolution, Mr. Joe Sullivan, a retired state legislator and respected community member, will run against Mr. Olson for township supervisor. Mr. Marx also states that Mr. Sullivan has lined up broad financial support from a large number of community leaders for his candidacy. In fact, while Mr. Marx has approached Mr. Sullivan about running for township supervisor, Mr. Sullivan has not committed to run.

Is Mr. Marx’s statement to Mr. Olson right or wrong?

Ethical Issue #3

Becky Green is the Chief Fiscal Advisor to the Detroit City Council. In this role, Ms. Green provides unbiased fiscal advice to the nine members of the City Council. At its January 10 meeting the City Council requests that Ms. Green do a study in regard to the cost effectiveness of the city's program to stop drugs by placing police officers in the city schools to counsel youths on the danger of drugs. The Council wants this report by April 1. Ms. Green does her research and concludes the program is ineffective and a waste of money. The President of the City Council, who is a strong supporter and the original sponsor of the program, hears that the conclusion is very critical of the program. The President of the City Council requests a meeting with Ms. Green and asks her to delay the release of the report until final decisions on next year's city budget are completed. The President suggests that Ms. Green should tell the other City Council members that a lack of data has delayed the report.

Ms. Green debates the issue and agrees to the request of the Council President. Was Ms. Green's decision correct

**STATE OF MICHIGAN
BOARD OF ETHICS**

To: Hilary F. Snell
Commissioner
Natural Resources Commission

ADVISORY OPINION
CONDUCT OF STATE OFFICER:

You have requested an **advisory opinion** as to whether a conflict of interest would exist due to your serving as a commissioner on the Natural Resources Commission while a partner in your law firm simultaneously represents a group which regularly appears before the Commission, often times in an adversary nature.

It appears that you are a partner in a Grand Rapids law firm; that prior to your appointment to the Natural Resources Commission on April 2, 1971, a partner in your firm represented Michigan United Conservation Clubs in a number of environmental lawsuits; that in some of this litigation, MUCC took the same position as the Department of Natural Resources but in others their position was opposed to that of the Department; that when you were appointed to the Natural Resources Commission, the members of your firm agreed that your partner, who was then representing MUCC, would conclude all pending cases and that, from the date of your appointment to the Commission, you personally did not participate in the sharing of any fees paid to your firm by MUCC. Since you became a Commissioner your firm has not represented MUCC in any capacity. Your letter indicates that the same partner has again been requested by MUCC to represent it in certain Indian Fishing Rights cases.

You have asked our **opinion** of the applicability of the Ethics Act to the following circumstances:

1. Assuming that I disqualified myself from any consideration of Indian Fishing Rights questions which might come before the Natural Resources Commission, would it be a conflict of interest for [one of my partners] to represent MUCC with the fees or compensation from such representation being shared by me as well as my partners?
2. If it would not be acceptable for me to share in such fees, even though I disqualified myself as set forth above, would there be any conflict of interest if [one of my partners] represented MUCC and I agreed not to participate in any fees generated?
3. Going beyond the question of [one of my partner's] representation of MUCC in the Indian Fishing Rights Controversy, and assuming that he again began to represent MUCC in such matters of litigation as they desired to engage in, whatever the subject matter, would there be a conflict of interest under either of situations 1 or 2 set forth above?

Two of the sections of 1973 PA 196, MCLA 15.341, *et seq.*, in our **opinion**, are directly applicable to the questions you have posed. Section 2(5) of the Act reads as follows:

A public officer or employee shall not engage in a business transaction in which he may profit from his official position or authority or benefit financially from confidential information which he has obtained or may obtain by reason of such position or authority.

In addition, Section 2(6) of the Act provides:

A public officer or employee shall not engage in or accept employment or render services for any private or public interest when that employment or service is incompatible or in conflict with the discharge of his official duties or when that employment may tend to impair his independence of judgment or action in the performance of his official duties.

Should the Commissioner be able to serve as a member of the NRC if his law firm were to represent MUCC in matters before the Commission?

Ethical Issue #5

**STATE OF MICHIGAN
BOARD OF ETHICS**

To: Arthur J. Zink
Personnel Director
Department of Labor

In your letter of May 21, 1979, you asked the Board of Ethics to render an **advisory opinion** in regard to departmental construction code field inspectors engaging in supplemental employment which entails teaching the technical codes, which they supervise and enforce as part of their public employment. Additionally, in that letter you expressed two main areas of concern. The first dealt with the affect of the supplemental employment on the inspector's public employment. The second, whether a conflict arises in teaching the various codes, regulations and statutes which the inspector has the official responsibility to enforce and supervise in that same geographical location.

In regard to your first area of concern, the effect of the supplemental employment on an employee's official duties, is a matter which the appointing agency must determine pursuant to the rules of the Civil Service Commission. As the Board has stressed in prior **opinions**, the decision to allow supplemental employment rests exclusively with the appointing authority, since supplemental employment involves many elements other than a violation of the Ethics Act, 1973 PA 196. Ware, 79-EA-8 (March 30, 1979), Taliafero, 79-EA-16 (October 26, 1979). Therefore, the final determination as to whether supplemental employment should be allowed rests exclusively with the Department of Labor and the Department of Civil Service.

As to the problem of departmental construction code field inspectors teaching the codes, regulations and statutes which they must supervise and enforce in their official capacity, it appears that your concern arises out of the fact that their students will be eventually licensed, and may be supervised by these same inspectors.

A Building Inspector IV, Plumbing Inspector IV, and an Electrical Inspector IV of the Bureau of Construction Codes, Department of Labor, are classified employees within the Executive branch and subject to the Ethics Act, 1973 PA 196, §1(b), MCLA 15.341(b); MSA 4.1700.

Employees in these three job classifications now wish to teach codes, rules, regulations and statutes within their respective areas to students in the same geographical area as their inspection assignments.

The Board of Ethics is a creature of statute and is limited by the law under which it operates. The Board may find a violation of the Ethics Act only if the facts before it delineate a violation of section 2 of the Act, 1978 PA 352, MCLA 15.342; MSA 4.1700(72).

The prohibition in the Ethics Act that is apparently applicable to your request is subsection 2 (6). This subsection states in pertinent part:

A public officer or EMPLOYEE SHALL NOT ENGAGE IN OR ACCEPT EMPLOYMENT OR RENDER SERVICES FOR A PRIVATE OR PUBLIC INTEREST WHEN THAT employment or SERVICE IS INCOMPATIBLE OR IN CONFLICT WITH THE DISCHARGE OF THE officer or EMPLOYEE'S OFFICIAL DUTIES OR WHEN THAT EMPLOYMENT MAY TEND TO IMPAIR his or her INDEPENDENCE of JUDGMENT OR ACTION in the performance

of OFFICIAL DUTIES. 1978 PA 352, MCLA 15.342 (6); MSA 4.1700 (72) (6) [Emphasis added]

Is it a violation of the Ethics Act for departmental construction code field inspectors to teach the codes, regulations and statutes which they supervise and enforce in their official capacity?

ETHICS RESOURCES/REFERENCES

Michigan Board of Ethics: <http://www.michigan.gov/mdcs/0,1607,7-147-32705---.00.html>

Josephson Institute of Ethics: www.josephsoninstitute.org

The Center for Public Integrity: www.publicintegrity.org

International City/County Management Association Code of Ethics – check for links to codes of ethics: <http://www2.icma.org/main/topic.asp?tpid=25&stid=118&hsid=10>

Santa Clara University – Markkula Center for Applied Ethics: http://www.scu.edu/ethics/practicing/focusareas/government_ethics/