PUBLIC WORKS
ETHICAL DILEMMAS

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DISCLAIMER

• No animals were harmed in the preparation of this PowerPoint.

• All opinions expressed by the panelists are their opinions and do not reflect the “official” positions of the entities for which they work.

• Any sarcasm is that of the panelists alone
WHATS ARE ETHICS?

• “Ethics is based on well-founded standards of right and wrong that prescribe what humans ought to do, usually in terms of rights, obligations, benefits to society, fairness, or specific virtues.”

WHERE DO WE GET ETHICAL “BOUNDARIES”

• Personal
• Professional
• Laws
• Policies
The 5 most common unethical behaviors in the workplace*

• Misusing company time
• Abusive Behavior
• Employee Theft
• Lying to employees
• Violating company internet policies

INTEGRITY

• Integrity, to a government officer means believing that the public trust is so important that it cannot be compromised. A procurement officer should therefore demonstrate integrity by:
  • Upholding the principles of the organization.
  • Demonstrating the values of the organization, including impartiality, fairness, honesty, and truthfulness, in daily activities and behaviors.
  • Acting without consideration of personal gain.
  • Resisting undue political pressure in decision making.
  • Not abusing power or authority.
  • Taking prompt action in cases of unprofessional or unethical behavior.

Adapted from the United Nations Handbook
CONCEPTS OF ETHICS IN PUBLIC WORKS

• integrity
• impartiality and fairness
• transparency
• confidentiality
• avoidance of appearance of impropriety
• due diligence.

ETHICAL RISKS

• conflict of interest
• fraud
• corruption
• coercion
• collusion
COLLUSION

• Collusion

• An agreement between two or more people to defraud a person of his or her rights

• or to obtain something that is prohibited by law.

• n. where two persons (or business entities through their officers or other employees) enter into a deceitful agreement, usually secret, to defraud and/or gain an unfair advantage over a third party, competitors, consumers or those with whom they are negotiating.

COLLUSION

• Collusion in Sales

• Price fixing

• For instance, if virtually all bananas sold in the United States were to come from three companies, they could possibly get together and agree not to charge less than a certain amount for their merchandise.
WHY ARE WE TALKING ABOUT BANANAS WHEN THIS IS PUBLIC WORKS?

• Trash – anti-trust laws
• Roofing – bid rigging
• Paving – cutting corners

Garbage NJ
State v. Trade Waste Assn. 1985

- Exclusive right to provide collection services at a particular location free from competition.
- NJ Supreme court found an “extortionate scheme”
- Some municipal PW supervisors found “complicit”

HOW THE CPWM FEELS

Make it so.
ROLE OF THE SUPERVISOR

• Understand the importance of ethical conduct and standards
• Provide training and for the employees
• Make sure the employees know the standards and your expectations
• Provide a positive ethical example
• Create an ethical environment

“ETHICS” LAWS THE SUPERVISOR MUST KNOW

• Local Government Ethics Law  NJSA 40A: 9-22.1 et.seq.
• Laws Against Discrimination  NJSA 10:5-12
• Various Local Public Contract Laws  NJSA 40A:11 –
• Criminal Laws NJSA 2C:27 -
• Federal Laws (Hatch Act, Hobbs Act, Honest Services Act)
• Common Law: Mal-, Mis-, and Non-feasance
• Sexual Harassment
EMPLOYERS RIGHTS

• Lesser right to privacy
• Search
• Drug/alcohol tests
• Social Media

N.J.S.A. 40A:9-22.2 et.seq.

a. Public office and employment are a public trust;...

e. It is the purpose of this act to provide a method of assuring that standards of ethical conduct and financial disclosure requirements for local government officers and employees shall be clear, consistent, uniform in their application, and enforceable on a Statewide basis, and to provide local officers or employees with advice and information concerning possible conflicts of interest which might arise in the conduct of their public duties.

• IT’S ALL CONFLICTS
LOCAL GOVERNMENT ETHICS STATUTE

• C. – CONFLICTS
• I. – INFORMATION
• G. – GIFTS
• A. – ABUSE OF OFFICE
• R. - REPRESENTATION

CONFLICTS

• A very common risk situation related to ethics in government is the risk of a conflict of interest. Conflict of interest can be defined as a direct or mutually exclusive clash between the interest of the [public entity] and the private or personal interest of a [government] officer. The Standards of Conduct in the International Civil Service (standards of conduct) states that:
CONFLICTS

• Staff members shall not be actively associated with the management of, or hold a financial interest in any profit-making business or other concern, if it were possible for the staff member or the profit-making, business or other concern to benefit from such association or financial interest by reason of his or her position with the [government entity]

CONFLICTS

• N.J.S.A. 40A:9-22.5a:
  No local government officer or employee or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest.
CONFLICTS

• Actions or Activities incompatible with public duties

• When is there a conflict of interest?
  • When a private interest can benefit from your actions.
  • When a private interest could interfere with official duties.

AVOIDING CONFLICTS

• Abstain. Don't participate in the activity.
• Disclose. Tell your supervisor about the potential conflict and let them decide whether to remove you from the activity.
• Review written procedures. Determine if your agency has a policy regarding how to handle conflicts of interest and follow that policy.[MEL]
• To avoid a conflict, you cannot merely delegate the activity to a subordinate.
INFORMATION

• N.J.S.A. 40A: 9-22.5(g)
No local government officer or employee shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated.

CONFLICTS

While reviewing a permit (job site) for a controversial development, the developer offers you a position with his company. Can you continue to work on the review if you want to take the new job offer?

• A. Yes, and expedite the review so I can begin salary negotiations.
• B. No, and immediately notify my supervisor.
• C. Yes. The job offer won't influence my review.
• D. Yes, because I am not interested in leaving my position.
CONFLICTS

• You are a PW Supervisor with a partnership interest in a local restaurant. This interest has not been disclosed to your agency. You are assigned to install water meter/sewer line of your restaurant. Do you perform the inspection?

A. No, I'll give the assignment to one of my staff.

B. Yes, a meter/sewer line will help my business

C. Yes and I'll review the books while I am there.

D. No, and I will inform my supervisor about my partnership interest

INFORMATION

• “Staff members shall not use their office or knowledge gained from their official functions for private gain, financial or otherwise, or for the private gain of any third party (...)”
GIFTS

• No local government officer or employee, member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contributions, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties.

• This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the local government officer has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the local government officer in the discharge of his official duties.

Criminal Code – Gifts

• Acceptance or receipt of unlawful benefit by public servant for official behavior

• Official misconduct – N.J. Criminal Code (N.J.S.A. 2C)
  • N.J.S.A. 2C:27-2 – Bribery in office and political matters
  • N.J.S.A. 2C:27-10 - Acceptance or receipt of unlawful benefit by public servant for official behavior.
  • N.J.S.A. 2C:30-2 - Official misconduct

• Solicitation, receipt
GIFTS

• Gifts and gratuities

• A common conflict of interest situation [government] officers have to face is whether or not to accept gifts from suppliers, partners or governments.

GIFTS

• Offering gifts to customers is a very common practice in the private sector. It is a marketing strategy based on the universal sense of reciprocity: if we receive something, we feel obliged to give something in exchange; i.e. there is no such thing like a “free lunch”. Suppliers often offer different types of gifts, for example perishable products, hospitality, free training courses or experiences like exhibitions, fair trades, and sometimes in kind donations, etc. that are related to the activity of the specific UN organization.
• Identifying **covert gifts** is not always easy, especially when at times, for example, training activities may be seen as beneficial for the organization; however, very careful review of the impact should be taken into account: **would receiving the gift benefit one company over the others?** Would acceptance be fair to the competitors

• **No staff member shall accept any honour, decoration, favour, gift or remuneration from any Government.** “No staff member shall accept any honour, decoration, favour, gift or remuneration from any non-governmental source without first obtaining the approval of the Secretary-General”
CONSEQUENCES

• Local Government Ethics Laws vs. Criminal Laws (2C)
• Fines up to $500 per occurrence
• Fines/Penalties (depending on degree of crime)
• Loss of Freedom, arrest, jail, prison, criminal record
• Restitution
• Never hold government job again
• Loss of Pension

BRIBERY

• Directly or indirectly offering, conferring or agreeing to confer upon another, or soliciting, accepting or agreeing to accept from another, any benefit as consideration for:
  • a. a decision, opinion, recommendation, vote or exercise of discretion of a public servant, party official or voter on any public issue or in any public election (N.J.S.A. 2C:27-2a);
BRIBERY

- b. a decision, vote, recommendation or exercise of official discretion in a judicial or administrative proceeding (N.J.S.A. 2C:27-2b);

- c. a violation of an official duty of a public servant or party official (N.J.S.A. 2C:27-2c); or


ABUSE OF OFFICE  UNWARRANTED PRIVILEGES

- N.J.S.A. 40A: 9-22.5(c)
  No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others.
MISCONDUCT IN OFFICE

• NJSA 2C:30-2
• A. Elements
  • A public servant is guilty of official misconduct when, with purpose to obtain a benefit for himself or another or to injure or to deprive another of a benefit:

MISCONDUCT IN OFFICE

• a. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized or he is committing such act in an unauthorized manner; or
• b. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office. (N.J.S.A. 2C:30-2.)
QUID PRO QUO

• Something for something
• Exchange of something
• Information, actions, gifts, promises

Quid pro quo, Clarice...
Can’t happen to me...

• Municipal trash man indicted for demanding residents “pay a premium” of $150 to him for hauling away load that he deemed oversized, too heavy or for items he “was not permitted to pick up” (renovation scraps, yard waste).
• “Shakedown Man” “...if you want to put something in the back of the truck, you have to put something in the front”.

Can’t happen to me...

• PW expanding route
• PW accepting vendor’s “free” hats, lunch
• PW – scrap or recyclables.
• Hand degreaser
Can’t happen to me...

• A city employee was arrested Wednesday and booked into the downtown jail, accused of abusing her position in the city's abandoned auto division to funnel abandoned cars to a car-crushing business under investigation.

• Employee is accused of seven counts of official misconduct, three counts of unauthorized use of a vehicle, and four counts of conspiracy to commit unauthorized use of a vehicle.

• Police said employee was tipping off an unauthorized tow driver to abandoned vehicles in the city, and getting cash kickbacks in return.

Can’t happen to me...

• Two supervisors for NJ Township Department of Public Works, were indicted for assigning municipal employees to work on election campaigns and to complete personal chores or projects for their boss, or for their own benefit.
HATCH ACT

• Do you perform duties in connection with a program funded by federal monies?

• If a municipal employee performs duties in connection with an activity financed in whole or in part by a federal loan or grant, it will not matter that he or she receives his or her salary from non-federal monies; that he or she has no authority or discretion on how those federal funds are spent; or that the federal monies fund only a small portion of the program; he or she will be subject to the Hatch Act.

ITS SILLY SEASON

• Can you wear political buttons to work? (what if it's for Mickey Mouse?)

• Can you place yard signs at your private residence?

• Can you work for a campaign?
IF IT WALKS LIKE A DUCK...

• Perception becomes “reality”
• Appearance of impropriety

ETHICS IS ABOUT CHOICE

• Acknowledge the good choices
• Educate about both good and bad choices
• Address the bad choices
THEFT OF TIME

• Doing personal work on government time
• Time card “fraud”
• Supervisor awarding himself “comp” time for work not done or seminars not attended
• Sleeping on job

CONFLICTS?

• Mr. Blue is employed as a nurse by the Greenacre municipality. While employed by Greenacre, he enrolled in an online Master’s of Health program through the southern New Hampshire University (SNHU). For approximately one semester, Mr. Blue accessed the SNHU websites and his SNHU emails through his State computer.

A. Mr. Blue is not in violation because he is bettering himself, gaining more knowledge, for his municipal job.
B. Mr. Blue connected with SNHU on his breaks and lunch time, so no violation.
C. Mr. Blue was in violation of the ethics laws because he used municipal resources for his private benefit.
D. There is no D.
Purchasing

• Information
• Recommending “sole source”
• Putting in orders for more than needed

Off duty or on duty – does it matter

• CT: Dec 2018 – PW worker arrested for fighting, pistol whipping another employee off duty

• Multiple States – DUI
  • Domestic Violence
SCRAPPERS

• Recycling theft
• Abandon homes (copper etc – insider information)
• Abandoned Cars
• Making “deals” with third parties

THEFT OF MATERIALS

• GA – 4 PW employees arrested in Atlanta – “as city continues its quest to root out suspected pervasive corruption”. (taking metals from PW yard and selling to recycling plant.)
• GA – 2015 Atlanta – City Auditor’s Office – couldn’t account for at least $2.2 million in materials, such as asphalt, pipes, automotive parts, water meters (10,000), and a $80,000 backhoe
BAD BOYS

• NJ – 2016 – drunk driving city owned truck – accident
• NJ – County PW employees – drugs Oxycodone, lb. of marijuana
• Activity conducted out of truck PW yard
• MD – 2015 PW at landfill site; taking selling scrap metal, taking bribes so some trucks did not pay tipping fees Hazelton, Bennett and Bolden are accused of "junking," a term used by other DPW employees to describe stealing salvageable items during work hours and selling them to private salvage yards for cash.

BAD EXAMPLES

• LA -using municipal gas card for personal purchases ($2000)
• FL – selling city’s tools for profit
• Ordering extra tires
• Agreeing to promote a product with free samples (hats, mugs – even calendars on walls)
Bridgeport CT

• FBI investigating Bridgeport CT Public Facilities (Works) Dept
• Selling scrap metal for personal profit

Submitting False REPORTS

• Authorities suspect that the water supply for Sidney, Iowa, wasn’t being properly tested for at least several years, and the city’s public works director falsely submitted reports to the state saying the testing was being done.

• PWD was arrested on suspicion of felonious misconduct while in office, the Sheriff’s Office said. (PW – Water director) turned himself in to authorities, posted bail and was released.
PW SUPERVISOR

• faces 14 counts of dealing in stolen property and 11 counts of false ownership of pawned items. He also faces one count each of grand theft and official misconduct.

HOBBS ACT

• Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both
HOBBS ACT

• Extortion means “the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.” This law was primarily enacted to combat racketeering but it is also used in public corruption cases. Conviction under Hobbs Act will be sustained based upon proof that a public official obtained payment in cash and/or property and generally intended to use his or her influence to benefit the payor as opportunities arose.

HONEST SERVICES ACT

• Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of mail, wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both (18 U.S.C. §§ 1341 & 1343)

“Scheme or artifice to defraud” was defined by Congress in 1988 as “a scheme or artifice to deprive another of the intangible right of honest services” (18 U.S.C. § 1346)
HONEST SERVICES ACT

In plain words, the law presumes a public official owes the public a duty of honest services. When the official fails and does so using the mail or telephones — or perhaps e-mail or BlackBerry — while concealing a financial interest, it becomes a crime.
DON'T DO THE CRIME IF YOU CAN'T DO THE TIME.

Proverb

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