

ABOVE REPROACH-HOW TO AVOID UNETHICAL CONDUCT AND SLEEP WELL

NMSBA 2019 Leadership Retreat

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What Are ?

- Each and all of you are subject to the Governmental Conduct Act, NMSA 1978, §§10-16-1, et seq. (“GCA”).

 are

- A set of moral principles : a theory or system of moral values,
- the principles of conduct governing an individual or a group

Board members are individuals entitled to receive per diem and mileage and board members, individually and as a group, are elected officials.

GCA Definitions, Section 10-6-2

- "confidential information" means information that by law or practice is **not** available to the public;
- "official act" means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority;
- "public officer or employee" means any elected or appointed official or employee of a state agency or local government agency who receives compensation in the form of salary or is eligible for per diem or mileage but excludes legislators.
- "standards" means the conduct required by the Governmental Conduct Act;

GCA General Principles:

Mandatory Conduct:

- A. A public officer or employee shall treat the public officer's or employee's position as a public trust. The public officer or employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.
- B. Public officers and employees shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.
- C. Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.

GCA General Principles:

Prohibited Conduct:

- D. No public officer or employee may request or receive, and no person may offer a legislator or public officer or employee, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced in accordance with the Criminal Code.

Reality Check#1; Cell Phone Poll

- Betty Board Member conducts an informal community poll to see if there is support for a girls varsity hockey team. Her niece Jane happens to be living with her for a year and was the hockey star at her old school.
- She uses the administrative office computer, copier and paper to circulate the poll flyer.
- She also offers to personally contribute the cost of the equipment to the school if the program is approved.

Reality Check#1; Cell Poll Q&A

Is Betty advancing only a public interest by promoting a girl's hockey team?

- Yes ___
- No ___

Can Betty put the flyers in employee mail boxes and attach them to emails to employees with the message: "Show your support for our girls"?

- Yes ___
- No ___

If Betty gets positive feedback to her flyers, can she report this at a board meeting by announcing the board always supports what the community wants?

- Yes ___
- No ___



Reality Check #1; Cell Poll Q&A

- If Betty asked the Superintendent's permission before using the district's resources to create and print the flyers, does her action become "ethical"?

Yes ____

No ____

- If Betty discloses to the Superintendent that the hockey program is Betty's way of helping Jane assimilate in the new school, and she is willing to contribute money to make this happen, is this adequate disclosure under the GCA?

Yes ____

No ____

Reality Check #1; Cell Poll Q&A

- Assume that Betty is the swing vote on renewal of the Superintendent's contract. If Betty mentions this to the Superintendent when she asks to use the district's resources, is she "requesting a thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act?"
- Yes _____
- No _____



GCA Prohibited Political Activities.

- A public officer or employee shall not:
 - A. directly or indirectly coerce or attempt to coerce another public officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for a political purpose;
 - B. threaten to deny a promotion or pay increase to an employee who does or does not vote for certain candidates, require an employee to contribute a percentage of the employee's pay to a political fund, influence a subordinate employee to purchase a ticket to a political fundraising dinner or similar event, advise an employee to take part in political activity or similar activities; or
 - C. violate the officer's or employee's duty not to use property belonging to a state agency or local government agency, or allow its use, for other than authorized purposes.

Reality Check #2; Cell Phone Poll

Ben, a board member, plans to run for the vacant congressional seat in Congressional District #3 as a candidate of the Amber Grains Party (“AGP”). The AGP supports technical, vocational and agricultural programs for schools, the expansion of American beer markets to achieve world peace, reduce hunger and illegal immigration and the elimination of the federal excise tax on everything.

Reality Check #2; Cell Poll Q&A

Can Ben announce his candidacy at the District's Christmas potluck for Board members and staff with a sign up sheet for potential supporters?

- Yes ___
- No ___

Can Ben distribute free tickets to staff so they can attend the kick-off fundraiser without cost?

- Yes ___
- No ___



Reality Check #2; Cell Poll Q&A

Can Ben encourage staff who do attend the fundraiser that showing support for him with yard signs and bumper stickers would sure be appreciated and would help him and the community see how many “fine folk” supported him?

- Yes _____
- No _____

If the whole Board supports Ben, can it advise the High School principal it would be great if Ben spoke to the Civics class since many of the students will be first time voters?

- Yes _____
- No _____

GCA Definitions, Section 10-16-2

D. "financial interest" means an interest held by an individual, his spouse or dependent minor children that is:

- (1) an ownership interest in business; or
- (2) any employment or prospective employment for which negotiations have already begun;

E. "official act" means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority;

I. "substantial interest" means an ownership interest that is greater than twenty percent.

Prohibited Acts for Personal Gain; Disqualification from Official Act; Penalty.

- Unlawful: taking an official act for the primary purpose of directly enhancing the public officer's or employee's financial interest or financial position.
- Penalty: Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony, and shall be sentenced pursuant to the Criminal Code.

Prohibited Acts for Personal Gain; Disqualification

A public officer or employee is disqualified from engaging in any official act directly affecting the public officer's or employee's financial interest, except a public officer or employee shall not be disqualified from engaging in an official act if the financial benefit of the financial interest to the public officer or employee is proportionately less than the benefit to the general public.

Prohibited Acts for Personal Gain; Disqualification

No public officer during the term for which elected and no public employee during the period of employment shall acquire a financial interest when the public officer or employee believes or should have reason to believe that the new financial interest will be directly affected by the officer's or employee's official act.

Reality Check # 3; Cell Poll

Board member Paula was appointed to fill a vacancy on the Board. Before her appointment, her husband was, and still is, an electric subcontractor on a district construction project. Since her appointment, there have been change order requests to increase the costs for electrical equipment and installation. The architect has proposed approval because there will be significant cost savings to the District over a 5 year period.

Reality Check #3; Cell Poll Q&A

Should Paula have disclosed the fact that her husband was a subcontractor on the District's project before accepting appointment to the board?

- Yes ____
- No ____

If not before, should she disclose her husband's contract now that the Change Orders are coming to the Board for approval?

- Yes ____
- No ____

Should Paula vote to approve the change orders if she has disclosed?

- Yes ____
- No ____

Reality Check #3, Cell Poll Q&A

If Paula is only an appointed member, does the GCA apply to her?

- Yes ____
- No ____

Additional GCA Prohibitions

Public Officers and Employees Shall Not:

- Receive payment or honoraria exceeding \$100, exclusive of per diem, mileage and lodging, for a speech or service related to performance of official duties. Section 10-16-4.1.
- Disclose confidential information acquired in an official position for his or another's private gain. Section 10-16-6.

Additional GCA Prohibitions

- If employee or official has authority over public money or issuance of bonds, accept a contribution or anything of value (not including food or refreshments less than \$100 consumed in one day) from a business that contracts with the governmental entity for financial services involving investment of public funds or issuance of bonds. Section 10-16-13.3B

GCA Prohibitions-Contracting

Specific Requirements as to Contracts with the School District:

Current Officers or Employees:

Officer or employee, family members, or businesses in which officer or employee has substantial interest may not enter into contract with School District, unless public disclosure of interest is made, and competitive process used to award contract. Sections 10-16-13.2B and 10-16-7 (similar to current restrictions imposed by Sections 22-21-1 and 13-1-190.)

Prohibitions-Contracting

Current Officers or Employees (Continued):

- Officer or employee may not sell or be party to a contract to sell goods, services tangible personal property or construction directly or indirectly through family or business to an employee supervised by the officer or employee. Section 10-16-3.2A.
- School District may not accept a bid or proposal from a person who directly participated in preparing the specifications, evaluation criteria or qualifications for the bid or RFP. Section 10-16-13

GCA Prohibitions-Contracting

Current Officers or Employees (Continued):

- Officer or employee may not accept an offer of a contract or receive a commission or profit from sale or transaction to sell goods, services, tangible personal property or construction from person over whom officer or employee has regulatory authority. Section 10-16-3.2C and D.

GCA Prohibitions-Contracting

Former Officers or Employees:

School District may not enter into contract with person or business which is assisted in a:

- transaction by former employee whose action while employee resulted in the District making or acting on the contract; or
- is represented by person who was public officer or employee within preceding year, if contract exceeds \$1,000, and results from official act of the officer or employee

Former Board Members; Prohibited Employment; Payments

Public School Code Section 22-5-5. **Compensation; prohibited employment.**

- A. The members of a local school board shall serve without compensation.
- B. No member of a local school board shall be employed in any capacity by a school district governed by that local school board during the term of office for which the member was elected or appointed.

GCA Section **10-16-4.1. Honoraria prohibited.**

- No legislator, public officer or employee may request or receive an honorarium for a speech or service rendered that relates to the performance of public duties. For the purposes of this section, "honorarium" means payment of money, or any other thing of value in excess of one hundred dollars (\$100), but does not include reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service, or payment or compensation for services rendered in the normal course of a private business pursuit.

Reality Check #4; Cell Phone Poll, Q&A

Mira Vista School District has had the practice of allowing Board members to be volunteer coaches. Other volunteers are paid a stipend or “honorarium” in appreciation for their services. If the stipend is \$1200 per year, can the board member accept it?

Yes ___

No ___

Is being a coach “rendering a service that relates to the performance of public duties?”

Yes ___

No ___



GCA Prohibitions-Contracting

Former Officers or Employees may not represent any person in dealings with the School District:

- On a matter as to which the former officer or employee participated directly or substantially while employed
- For 1 year period after leaving employment, receive compensation or pay for representation before the School District or School Board.

Reality Check #4; Cell Phone Poll

- Mira Vista's HR Director, Rita, retires June 30, 2019 and is offered a position with a private consulting firm, Wonderworkers, that provides in service training to school districts and also offer policy development. Prior to retiring, Rita and other staff in the HR department had provided all in service training.

If Rita accepts employment, can she be the Wonderworker's consultant and provide training in the 2019-2020 school year?

Yes ____

No ____

If you learn of Rita's actions, should you contact some one?

Yes ____

No ____

Reality Check #4, Cell Phone

Q&A

Who would you first contact?

KOB?

Yes ____

No ____

The Board president?

Yes ____

No ____

The Superintendent?

Yes ____

No ____

Mandatory GCA Requirements- Disclosure

Disclosure of Outside Employment:

- All public officers or employees must disclose in writing to the employer (School Board or Superintendent) all employment engaged in by the officer or employee other than the employment with or service to the School District. Section 10-16-4.2

Additional Penalties

Penalties for Violation:

- Other than those prohibitions which carry felony sanctions, as specified above, violation of Act constitutes a misdemeanor (maximum penalties \$1,000 or imprisonment of up to 1 year, or both.)
- Attorney General may enforce civil penalties and Secretary of State may investigate and require corrective action.
- Alleged violations could be basis for initiating recall effort against school board members.

Recall for Malfeasance, Misfeasance or Violation of Oath of Office

- 2019 Amendments to Local Board Member Recall Act recompile this Act under the Election Code and give statutory definitions to the terms malfeasance, misfeasance and violation of oath of office in Section 1-25-2:
- F. "malfeasance" means wrongful conduct that affects, interrupts or interferes with the performance of official duties; provided that if the act is discretionary, the act was performed with an improper or corrupt motive;...
- G. "misfeasance" means performing a legal act in an improper or illegal manner and the conduct evinces an improper or corrupt motive;...
- L. "violation of oath of office" means to refuse or neglect to perform, without any just cause, any of the duties that are or shall be required by law of the named official.

GCA and Recall Act – Two Sides of the Same Coin

- <https://dictionary.cambridge.org/dictionary/english/corrupt>
- **corrupt definition:** 1. dishonestly using your position or power to get an advantage, especially for money: 2. morally bad

The GCA gives board members the guidance necessary to avoid both its penalties and the likelihood of losing a Recall Act proceeding.

When in doubt, use your common sense, ask for advice before acting and err on the side of caution.

Then, you will sleep well.

Questions?

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