

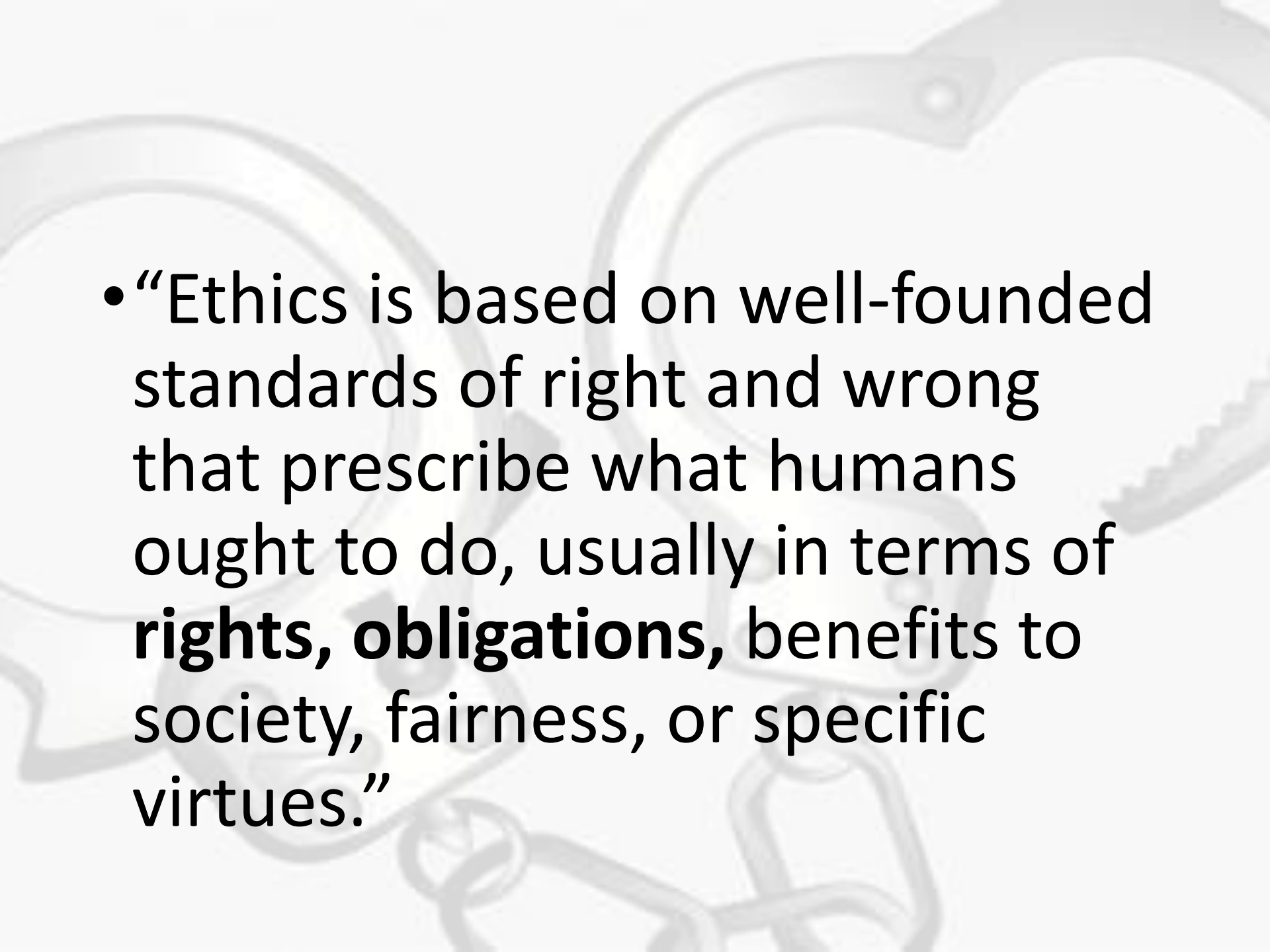


ETHICS AN UPDATE

Susan Jacobucci, Esq. CMFO
NJSLOM
March 19, 2019

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

- 
- “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.**”

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

TWO PRONGS OF THE LGEL

- Financial Disclosure Forms
 - Who fills out (everyone)
- Managerial Executives expanded
- LFN 2019-4: 2018 Rosters carried over (March 18, 2019)
- Electronic filing on or before April 30th
- Fill out all lines (even if none or N/A)
- Clerk's responsibility regarding roster (contained in detail in LFN
- Wearing several hats – file separately for each

WHO DOESN'T HAVE TO FILE WITH LGS

- AO 91-0096: Court Personnel – Including Judges and Court Administrators
- AO 91-0141: County Board of Taxation Commissioners
- AO 92-0070: Local Assistance Board Members
- AO 92-0071: Municipal Environmental Commission Members
- AO 92-0109: Emergency Management Council Members
- AO 95-0168: o County/Local Advisory Committee on Alcoholism and Drug Abuse Members
- County Alliance Steering Subcommittee Members
- Municipal Alliance Committee Members
- AO 97-0135: Registered Municipal Accountants Serving as Local Government Auditors

CLERK'S RESPONSIBILITY

- It is the LGE representative's responsibility to ensure that the LGO roster is fully and accurately updated on or before **March 31, 2019**. Those LGE representatives who do not update the rosters may be subjecting some LGOs to possible violations of the filing requirement in the Local Government Ethics Law. For example, all LGOs who remain active on rosters will be required to submit a 2019 FDS. Those LGOs who are improperly retained on the roster, and as a result, fail to file an FDS, could be found in violation. Notices of violation for non-filing will be generated after the filing deadline from the roster created by the LGE representative. Similarly, new LGOs who are required to be listed on the roster, but whose names have not been added, will not receive a PIN # and, therefore, will not be able to file an FDS.

THE OTHER PRONG

- Local Government Ethics Law
 - Applies to all local government employees and elected officials , including authorities
 - Consequences

FED ETHICS

- OGE REPORTED:
- **How many violations:**
- There were a total of 1,584 violations of rules which resulted in disciplinary action in 2015, according to the OGE.
- Among the most common violations were offenses such as promoting a product or service that would be beneficial to a federal employee, their friends or family members. Other frequent offenses included the improper use of government property, such as a computer or vehicle, or improper activities while on government time.

NJ STATE CASE

- Going to SNHSU (you've seen the commercials)
- "Recusing" self from voting but participation in discussions, emails etc.

CONCEPTS OF ETHICS

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

Integrity

- Adherence to moral and ethical principles; soundness of moral character
- Acting in an honorable manner regardless of the circumstances or who is watching
- Keeping your promises to yourself and others
 - **Be true to yourself in all that you do.**

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

LOCAL GOVERNMENT ETHICS STATUTE

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

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

- *A very common risk situation related to ethics 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 municipality and the private or personal interest of a Clerk.*

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 United Nations*

United Nations Ethics Code

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]
- Obtain a screening memo. Have your work center write a memorandum outlining the conflicts and telling everyone that you are to be screened from specific information or decision-making regarding that particular transaction.
- **To avoid a conflict, you cannot merely delegate the activity to a subordinate.**

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.

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”.*

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*);

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.*)

CRIME AND PUNISHMENT

The background of the slide features a faint, grayscale image of a pair of handcuffs and a chain, symbolizing crime and punishment.

- Criminal vs. LGEL
- Consequences
 - Arrest/Indictment
 - Loss of Job
 - Loss of Liberty (jail)
 - Penalties, fines, court costs
 - Restitution
 - Never hold Government job again
 - Loss of Pension

NJ CRIMINAL CODES

- First degree crimes:
- Corruption of public resources if the value of the resource is \$500,000 or more and subject to obligation to facilitate a public service. N.J. Stat. Ann. § 2C:27-12.
- Punishable by term of imprisonment between 10 and 20 years. N.J. Stat. Ann. § 2C:43-6. Restitution plus a fine of up to \$200,000. N.J. Stat. Ann. § 2C:43-3.

A MATTER OF DEGREE

- First degree crimes:
- Corruption of public resources if the value of the resource is \$500,000 or more and subject to obligation to facilitate a public service. N.J. Stat. Ann. § 2C:27-12.
- Punishable by term of imprisonment between 10 and 20 years. N.J. Stat. Ann. § 2C:43-6. Restitution plus a fine of up to \$200,000. N.J. Stat. Ann. § 2C:43-3.

THE THIRD DEGREE

- Third degree crimes:
- Pattern of official misconduct, if none of the acts is a first or second degree crime. N.J. Stat. Ann. § 2C:30-7.
- Speculating or wagering on official action or information, if benefit is of \$200 or less. N.J. Stat. Ann. § 2C:30-3.
- Official misconduct, if benefit is of \$200 or less. N.J. Stat. Ann. § 2C:30-2.
- Corruption of public resources if the value of the resource is less than \$75,000, and subject to obligation to facilitate a public service, or between \$75,000 and \$500,000 if not. N.J. Stat. Ann. § 2C:27-12.
- Unlawful benefit to public servant for official behavior, if under \$200. N.J. Stat. Ann. § 2C:27-11 & N.J. Stat. Ann. § 2C:27-10.
- Improper influence in official and political matters. N.J. Stat. Ann. § 2C:27-3. Bribery, if value is \$200 or less. N.J. Stat. Ann. § 2C:27-2.
- Punishable by term of imprisonment between 3 and 5 years. N.J. Stat. Ann. § 2C:43-6. Restitution plus a fine of up to \$15,000. N.J. Stat. Ann. § 2C:43-3.

RISK REWARD?

- Fourth degree crimes:
- Public servant transacting business with certain prohibited persons (him or herself, a family member, associated business). N.J. Stat. Ann. § 2C:27-9.
- Corruption of public resources if the value of the resource is less than \$75,000, and not subject to obligation to facilitate a public service. N.J. Stat. Ann. § 2C:27-12.
- Retaliation for past official action. N.J. Stat. Ann. § 2C:27-5.
- Punishable by term of imprisonment no more than 18 months. N.J. Stat. Ann. § 2C:43-6. Restitution plus a fine of up to \$10,000. N.J. Stat. Ann. § 2C:43-3.

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

PICTUREQUOTES.COM