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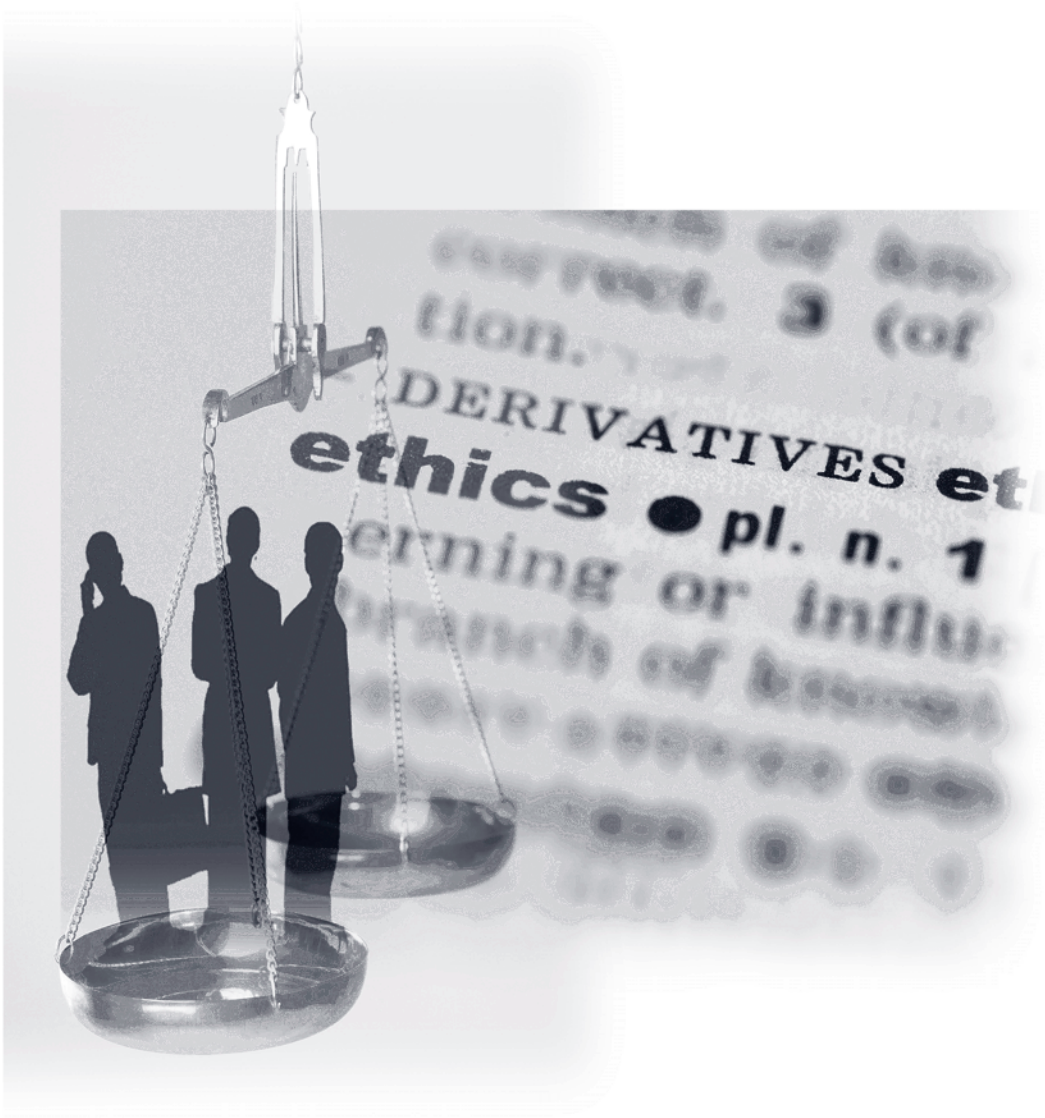
Ethics in Government:

Charting the Right Course



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Ethics in Government:

Charting the Right Course

July 2010

FOREWORD

GMA is pleased to provide Ethics in Government: Charting the Right Course as an aid for municipal officials. Ethics in Government: Finding the Right Course (1993) was the product of a committee comprised of GMA elected and appointed city officials who spent a year developing the publication. In September 1999 GMA published a Model Code of Ethics for Georgia City Officials and launched the "Certified City of Ethics" program. The two ethics publications were brought together in 2005 in the first edition of Ethics in Government: Charting the Right Course. An Ethics Task Force comprised of elected municipal officials was appointed in 2008 to review the "Certified City of Ethics" program and make recommendations to continue its success. The Task Force recommended re-certification of cities every four years so that changing elected leadership would be aware of the city's commitment to ethical conduct. The Task Force also approved a model ethics ordinance that includes appropriate alternative language to accommodate cities of differing size that want to join the "Certified City of Ethics" program. The publication before you, Ethics in Government: Charting the Right Course, is an updated version of the 2005 edition which includes the model ethics ordinance, major changes made to state law in the 2010 legislative session, and updated text and citations.

This publication is intended to be a guide assisting city officials in both considering the process of developing and enacting comprehensive codes of ethics and in facing ethical dilemmas on a day-to-day basis. No guide can answer every ethical question faced by municipal officials. We are hopeful, however, that the handbook will provide a framework for municipal officials to make appropriate decisions for the benefit of the citizens that they represent both in terms of their own actions and in terms of the ethics codes they enact. Although a sample ethics code is provided in this publication, it is provided as a guide only and city officials should thoroughly discuss and understand any ethics provisions they plan to adopt and tailor such provisions to the needs of their city and its citizens. . Always consult with your city attorney prior to enacting ethics ordinances.

All references to state law and local ordinances are accurate as of the date this document was published. Subsequent amendments and case law interpretations may be applicable. Therefore, the city attorney should always be consulted for up to date legal advice.

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Defining Ethics: An Introduction

Ethics: 1. the discipline dealing with what is good and bad and with moral duty and obligation; 2. a. a set of moral principles or values; b. a theory or system of moral values; c. the principles of conduct governing an individual or a group; d. a guiding philosophy

– Merriam-Webster Online Dictionary

Ethics: 2. the study of the general nature of morals and of the specific moral choices to be made by a person; moral philosophy; 3. the rules or standards governing the conduct of a person or the members of a profession: medical ethics.

– The American Heritage Dictionary of the English Language, 4th Edition

Before beginning a discussion of ethics in municipal government, we must understand what ethics entails. The foregoing definitions are as ambiguous as the concept itself, and are thus appropriate, for ethics is an area in which difficult distinctions between good and bad must be made. The public rightfully expects its elected officials to conduct themselves with honesty and integrity while working for the common good and representative democracy demands such action if it is to function effectively. Therefore, in order to instill confidence in the electorate, it is imperative that local governments establish a mechanism to ensure that elected officials observe a prescribed set of ethical guidelines in performing the duties of office.

Trust is the key word to describe the appropriate relationship between elected officials and their constituents. An elected official obtains the privilege to serve only by earning the trust of a majority of the electorate, and the official must be careful not to compromise that trust in any way once he or she has been inducted into office. The elected official must always bear in mind:

> All government, of right, originates with the people, is founded upon their will only, and is instituted solely for the good of the whole. Public officers are the trustees and servants of the people and are at all times amenable to them.[1]

With these words, the state constitution creates two roles for public officers – that of trustee and that of servant. The role of trustee has always been held to a higher standard in American law; it was said best by Justice Cardozo when he determined that "[a] trustee is held to something stricter than the morals of the marketplace."[2] The public officer's role as trustee of the people is perhaps the highest calling that one can be granted under law. As trustees, public officers have a fiduciary duty to their constituents.[3] A fiduciary is charged with managing something of value for a beneficiary, and the public officer's fiduciary duty is to govern and manage public property so as to maximize the benefits to all citizens. A public officer should strive to further the general

[1] Ga. Const. Art.I, Sec.II, Par.I.
[2] See Meinhard v. Salmon, 164 N.E. 545 (N.Y. 1928).
[3] See Black's Law Dictionary, 7th Ed., pg. 1519.

welfare, and that officer should not seek to use public office in order to improve his or her own private standing to any greater extent than that enjoyed by the members of the public-at-large.

The second idea suggested by the constitutional provision is that the public officer is a servant of the people. A servant cannot exist without a master, and the Constitution establishes that the public is the "master." Public officers are the servants who are charged with responding to the needs and wishes of the master. Both of these concepts serve to illustrate how the very sensitive relationship between elected officials and the public they serve is based on trust. The elected official's own personal ethical standards as well as clear, readily enforceable ethics legislation will contribute greatly to the public's confidence in that official.

Public officials must bear in mind that they act not only as individuals but also as leaders of the community, and they should consider their roles in that respect when determining a course of action or in formulating standards to govern their own behavior. Since values in modern society are not universally shared, there are no undisputed absolutes to indicate exactly what should be done in every possible situation. However, the public officer is conclusively bound by a fiduciary obligation to serve the public. This obligation figures very prominently in determining what is acceptable behavior for the public officer.[4]

Over the years, the State of Georgia has enacted a number of laws that deal with ethics, touching on several broad issues that arise in this area. Although the laws are varied and scattered throughout the code, they all emphasize the need for elected and appointed officials alike to show impartiality, efficiency, fairness and honesty in all of their dealings. In 1999 the GMA Ethics Task Force, seeing this trend, established five essential principles for effective, ethical government:

- Serve Others, Not Ourselves
- Use Resources with Efficiency and Economy
- Treat All People Fairly
- Use the Power of Our Position for the Well-being of Our Constituents
- Create an Environment of Honesty, Openness, and Integrity

The five ethics principles seek to capture, in the broadest statements possible, the central concepts that should underlie the conduct of municipal elected officials. While the principles themselves have overlapping characteristics, as a whole they embody the spirit with which government officials should represent their constituents.

The proper functioning of local government requires that public officers and employees act impartially and responsibly to the communities they serve. The public is entitled to governmental policies and decisions that have been made within the proper channels of the governmental structure; they are further entitled to public officers that do not exploit their office in pursuit of private gain. Adhering to these principles will contribute toward instilling greater confidence in the integrity of government, and codifying these standards into legislation will foster the development and maintenance of a tradition of responsible and effective governmental service. The public judges its government by the manner in which public officials conduct themselves in

[4] Cooper, The Responsible Administrator, Josey-Bass Pub., San Francisco, 1990, pp. 36, 41, 42.

their elective or appointive posts; the best way to promote public confidence and respect is for every public official to uniformly "treat all citizens with courtesy, impartiality, fairness, and equality under the law…and…avoid both actual and potential conflicts between their private self-interest and the public interest."[5]

Even though the public interest may represent no more than the accumulation of the various special interests held throughout society, the public officer has an obligation to always give objective consideration to all decisions made in his or her official capacity. This becomes even more important when the considerations involve the officer's own personal interests, for it is well established that a public officer cannot be permitted to make a profit as a result of his or her fiduciary duty to the public.[6] Ethical conflicts may arise whenever the personal interest of a public official prevents or even appears to prevent an unbiased decision with respect to a matter before the official in his or official capacity.[7] These situations are inevitably a central focus of any comprehensive ethics code.

The public official regularly encounters potential violations of ethical principles in the conduct of governmental affairs. There are ample opportunities for profit in governmental service, and this factor combined with the official's likely control over the situation represents a key element in the creation of ethical violations. An effective code of ethics seeks to nullify even the appearance of impropriety on behalf of the public officer by providing clear guidelines concerning what situations should be avoided and how to deal with those situations that cannot be avoided.

Ethical conflicts in the legislative setting are generally resolved according to two different approaches, either disclosure or disqualification. There are some situations that arise where the mere appearance of impropriety alone may be sufficient to warrant disqualifying the public officer from the consideration of certain matters, while in other situations the public officer's disclosure of any possible interest he or she may have will be sufficient to allow the officer to participate in the resolution of the matter. Ethical codes often provide resolutions for conflicts that combine aspects of both approaches, according to the facts of the particular situation.

However, an important consideration for any ethics code should also be the recruitment and retention of those persons most qualified to provide effective leadership in government service. In order to satisfy this goal, there should be safeguards within the law to ensure that approaches to resolving ethical conflicts do not impair the ability of public officers to seek reasonable private gain to the same extent available to the general public. This principle illustrates the delicate balancing approach that goes into formulating effective ethics legislation without hindering the ability of government to operate efficiently.

Georgia law holds: "It is improper and illegal for a member of a municipal counsel to vote upon any question brought before the council in which he is personally interested."[8] This long-

[5] Matthews Model Ordinances § 30.135.
[6] See e.g. Twiggs v. Wingfield, 147 Ga. 790, 95 S.E. 711 (1918).
[7] Note, Fighting Conflicts of Interest in Officialdom: Constitutional and Practical Guidelines for State Financial Disclosure Laws, 73 Mich. L. Rev. 758 (1975).
[8] O.C.G.A. § 36-30-6

standing statutory provision is derived from an 1888 court case,[9] and "personal interest" has been subsequently construed by the courts to mean a financial interest.[10] A public officer should never take any official action with regard to any matter under circumstances in which the officer knows of any possible financial interests he or she may have in the matter if this action has the potential of benefiting the officer to a greater extent than that available to the public-at-large.

The prohibition on the use of office for personal financial gain to the public officer, his or her business interests, members of his or her household, or his or her clients is the most common prohibition contained in ethics codes around the country.[11] A majority of these codes call for the disqualification of the public officer from participating in the government's deliberation of the matter in which he or she has an interest. Some ethics codes go further, prohibiting the public officer from conducting any business with the government, period, whenever the officer has a personal interest in the matter. These stricter regulations can handicap local governments by precluding some otherwise reliable sources from transacting with the government; this problem arises especially in smaller communities due to the limited number of alternative sources. These considerations require additional balancing to determine the extent to which a municipality's representatives should be allowed to transact business with the government without violating the public trust.

At the other end of the spectrum, some ethics codes do not completely proscribe the officer from engaging in the performance of duties regarding matters in which he or she has a personal interest. Public disclosure of whatever interest the officer may have is sometimes considered an adequate safeguard of the public's interest in these situations.

Transactional disclosure, where the public officer is required to disclose any personal interest he or she may have in the matter being considered by the governmental entity, is usually considered the most effective method. This procedure is based on the rationale that increased public scrutiny will insure accountability while at the same time allowing the public officer to share his or her distinctive insight into the matter in the formulating of governmental decisions and policies. Those officers having only an indirect interest in the matter, such as a member of a zoning board who is a real estate agent and would likely receive commissions based on the sale of new houses if a proposed development were to receive zoning approval, may be allowed to participate in the process.[12] This interest would be considered indirect only if the officer's public capacity placed him or her in no greater position to profit from the zoning decision than any other real estate agent in the community at large.

Whether a particular situation calls for disqualification or disclosure depends in large part upon a value judgment, balancing efficient provision of governmental services with the harmful effects of the appearance of impropriety. These values are determined by the individual public official, the governmental body, and, most importantly, the members of the public. Often the mere threat of the appearance of impropriety suggests that the public official should be disqualified even though he or she may be the best available source for a particular product or service.

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[9] Daly v. Georgia S. and F.R.R., 80 Ga. 793, 7 S.E. 146 (1888).
[10] See Story v. City of Macon, 205 Ga. 590, 54 S.E.2d 396 (1949).
[11] See Carpinello, "Designing Municipal Ethics Codes," Urban, State, and Local Law Newsletter, Vol.16, No.1, Fall 1992, p.6.
[12] Id.

With increasing frequency, the media is defining what is and is not ethical behavior for public officials. While it is clear to most people familiar with local government that the vast majority of public officials are honest and conscientious people who choose public service as a means of serving their community, the occasional high-profile case involving unscrupulous behavior can leave the public with the unfortunate impression that misconduct is the rule rather than the exception.[13] One measure often applied to determine whether conduct is ethical is the "How will it read in the newspaper?" test. While some people may view this test as being somewhat cynical, it is actually a natural reflection of the ambiguity involved in formulating an equitable code of ethics in modern society. The public's potential reaction to the official's conduct if it were reported in the news provides an objective yardstick for the public official; the perception of the public is intrinsic to achieving the objective of eliminating the appearance of impropriety. Other tests employed by local government officials include the "Golden Rule" test, in which the official asks whether he would approve if other officials did the same thing under similar circumstances, and the "Kid on Your Shoulder" test, in which the official asks whether he or she would feel comfortable with his or her child observing the official's actions.[14] All of these techniques allow the official to utilize a degree of objective criteria in situations providing no clear boundaries between right and wrong.

Today's population is larger, more diverse, more complex, and provided with access to more information than at any other time in our nation's history. The media provides a great deal of access to governmental affairs; this access has been multiplied exponentially by the development and wide spread use of the Internet. Because of this increased access, public officials have come under increasing scrutiny, leading to a growing dissatisfaction in some segments of society with the way government operates, from the local level to the federal. Accordingly, the "How will it read in the newspaper?" test now assumes an even greater role in shaping the conduct of elected officials. An elected official must always remember that trust is the key to an effective relationship with his or her constituents, and the key to building that trust depends in large part on the official's image as portrayed in the media. The media can act as an effective "watchdog," keeping the public informed about their elected official's behavior; it is in everyone's best interest to have consistent ethics laws by which to measure that behavior.

Avoiding the appearance of impropriety becomes very difficult at times because impropriety can mean different things to different people. This is an inevitable result of the diverse views embraced within our democratic society today, and a continuous dialogue concerning this type of issue is essential to further improvement of our system of government. This provides little comfort for the elected official who must deal with situations involving real ethical dilemmas on a regular basis. That is why a concise code of ethics is useful to provide the official with clear guidelines and to provide a framework for determining the proper course of action in those situations not specifically provided for in the code.

Within a single governmental body there may be a range of viewpoints concerning ethics issues that is as broad as that represented within the general population. Since the beginning of

[13] See Cox, Ethics in Government: The Cornerstone of Public Trust, 94 W. Va. L. Rev. 281, 300, Winter 1991/1992.
[14] Grubiak, "Ethics, Conflicts of Interest, and Abuse of Office," Georgia County Government, November 1992, p.12.

civilization there has been a belief that a person must often put community obligations above personal gain, and this led to the eventual establishment of ethical standards and codes. Ethical standards define society's expectations of itself; they express our moral judgment and sharpen our awareness of its application.[15] Codifying these standards into law helps to ensure that the principles embodied therein will be complied with as well as providing some foundation for the official who legitimately needs guidelines to determine what is ethical in a given situation.

So long as the public official conducts himself or herself consistently within the norms provided in the ethics code, the members of a governmental body should strive to be tolerant of differing viewpoints concerning the various ethical issues that may arise. For example, some officials refuse to accept anything of value (even a lunch) out of concern for avoiding the appearance of impropriety. While this official may be looked upon by some cohorts as sort of a "goody-goody," such persons should be applauded for setting such high standards for the community.

Some actions are so egregious that any reasonable person would agree that they are ethical violations, such as trading zoning votes for cash (which would be illegal as well). Other situations may not be such clear violations, depending on one's perspective. For example, is it against public policy to include in a contract with an entertainment company for the use of city property that the company shall provide a certain number of "free" tickets to the event for the members of the municipal governing body? What about the purchase at public auction of a surplus city automobile by the son or daughter of a public official, when that official may have known about the particularly good condition of the car because of his or her position? Would the sale of insurance to the city by an agency that has a council member as a partner in the agency be in the public's best interest, even if the council member did not participate in the transaction in any way? Finally, what kinds of favors or gifts, if any, should someone who contracts or potentially contracts with the city be allowed to bestow upon a public official who happens to be a genuine personal friend? These and other situations are commonly encountered by public officials, and the proper resolution of these issues is instrumental in maintaining the public confidence necessary for government to operate effectively.

[15] Cox, supra note 13, at 300.

Conflicts of Interest

The subject of conflicts of interest is one of fundamental importance in the field of governmental ethics. A conflict of interest may be defined as any situation where the personal interest of a public official in a matter before them may prevent, or even appear to prevent, them from making an unbiased decision with respect to that matter. The principal evil conflict of interest laws seek to prevent is the danger of the public being "shortchanged" through the receipt of less than a public official's most objective, fair-minded and best efforts on behalf of the public as the result of being influenced by the official's possibly competing interests.[16]

The zealous belief that no public official should be led into the temptation to profit out of the public matters entrusted to them runs very strong in our nation, particularly in Georgia. The trust that is so important to an effective relationship between a public official and the public they serve depends on the avoidance of the mere appearance of impropriety as well. Therefore, public officials must always be mindful of the reality that circumstances and situations can by themselves create potential violations of ethical principles, regardless of the official's actions. It has been said that the temptation to profit, combined with the opportunity to profit, can lead to impropriety; the prudent municipal official is always keenly aware of this.

The public's interest in avoiding this problem was addressed early in our nation's history when it was stated:

> The aim of every political constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and the most virtue to pursue the common good of society; and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold the public trust.[17]

These profound words by one of our founding fathers continue to embody an ideal that holds true to this day, and in Georgia this ideal has been codified into law through the state Constitution, civil and criminal statutes, and court cases.

The Georgia Constitution provides that "Public officers are the trustees and servants of the people."[18] This constitutional trust provision is applied when "a public officer had definitely benefited financially (or definitely stood to benefit financially) as a result of simply performing their official duties."[19] Accordingly, a public office is a trust created for the benefit of the people. The Georgia Court has long held that public officials can be either elected or

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[16] See e.g., City of Coral Gables v. Weksler, 164 So.2d 260, 263 (Fla. Ct. App. 1964).
[17] The Federalist No. 57, at 348 (James Madison) (Clinton Rossiter ed. 2003).
[18] Ga. Const. Art.I, Sec.II, Par.I.
[19] Crozer v. Reichert, 275 Ga. 118, 561 S.E.2d 120 (2002) (stating that the burden of proof is on the interested official to show that 1) the official is not a "public officer" within the meaning of the constitutional trust provision and 2) the official did not have a conflict of interest), citing Ianicelli v. McNeely, 272 Ga. 234, 527 S.E.2d 189 (2000).

appointed;[20] the court determines whether an official is a public official based on an analysis of the person's duties, powers and obligations, rather than on the extent of his or her authority.[21] Historically, public officers were subject to every limitation imposed by law upon trustees generally, including those limiting personal financial gain from the discharge of official duties.[22] Those limitations extended to local government officers as well. The rule, while effective, was too limiting and appeared draconian in comparison to other jurisdictions. The Georgia Supreme Court finally reevaluated the rule in 2001;[23] upon finding that the earlier rule was too strict, they elected to adopt an ad hoc conflicts of interest standard.[24] The newer standard calls for a case-by-case evaluation of the circumstances surrounding each transaction in order to determine if an actual conflict of interest is present. The constitutional trust provision also suggests that public officers must consider themselves servants of the people. A servant cannot exist without a master. The Georgia Constitution establishes the public as masters and public officers as servants who are charged with responding to the needs and wishes of the master.

The constitutional trust provision provides the foundation for the subsequent legislative enactments concerning conflicts of interest. In the Code of Ethics for Government Service, the legislature recited a comprehensive, non-binding guide for public officials to follow:

I. Put loyalty to the highest moral principles and to country above loyalty to persons, party or government department.
II. Uphold the Constitution, laws, and legal regulations of the United States and the State of Georgia and of all governments therein and never be a party to their evasion.
III. Give a full day's labor for a full day's pay and give to the performance of duties earnest effort and best thought.
IV. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
V. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not, and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.
VI. Make no private promises of any kind binding upon the duties of office, since a government employee has no private word which can be binding on public duty.
VII. Engage in no business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of governmental duties.
VIII. Never use any information received in confidentiality in the performance of governmental duties as a means for making private profit.
IX. Expose corruption wherever discovered.
X. Uphold these principles, ever conscious that public office is a public trust.[25]

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[20] See Bradford v. Justices of Inferior Court, 33 Ga. 332 (1862). See also Templeman v. Jeffries, 172 Ga. 895, 159 S.E. 248 (1931) (holding that appointed officers are public officers).
[21] Bradford, 33 Ga. at 332.
[22] See Georgia Department of Human Resources v. Sistrunk, 249 Ga. 543, 291 S.E.2d 524 (1982).
[23] See Georgia Ports Authority v. Harris, 274 Ga. 146, 549 S.E.2d 95 (2001).
[24] Id.
[25] O.C.G.A. § 45-10-1.

Although this Code of Ethics is very extensive, it does not contain any enforcement mechanism and it carries no penalties for violation. Therefore, it is left to the various criminal and civil statutes to enforce the ideals behind this code.

The Georgia code has a number of statutory provisions with regards to ethics in the conduct of governmental affairs. These provisions consist of both civil restrictions and criminal sanctions.

Civil Statutes

"It is improper and illegal for a member of a municipal council to vote on any question brought before the council in which he is personally interested."[26] As discussed in the introductory section, "personally interested" has been interpreted as "financially interested."[27] The Georgia courts have cited this statutory provision on a number of occasions as authority to void municipal contracts. For example, it has been wielded to void a contract between a city and a private corporation in which one of the council members owned stock.[28] It has also been used to void a rezoning application when one of the commissioners voting on the issue was related to a lawyer representing the applicants.[29] The Court has even granted this provision such broad construction as to void a contract after the contract had been reconfirmed subsequent to the financially interested member's resignation from the council.[30] However, the Attorney General has insisted that the conflict of interest statutes be construed so as to not make unlawful "relationships which are not surreptitious and which are a benefit to the State rather than a source of corruption, real or potential."[31]

These statutes and court decisions present realistic problems for municipal officials. Do they mean that a mayor and council are unable to purchase General Motors police cars merely because the Mayor owns 100 shares of General Motors stock, or is employed by the local General Motors plant? No, there must be some opportunity for measurable profit to the official in order for the prohibitions to apply.[32] What if a council member is an avid golfer, and a vendor who has a contract with the city invites the council member to an "all expense paid" golfing weekend at a resort – would this be ethical? Could the vendor ethically pay the city official's greens fees at a local country club? Or what about the contractor who does business with the city and wants to take the council to see a baseball game from his club-level seats, is this ethical? Similar situations are commonly encountered by public officials, and become especially perplexing during a baseball pennant race. To address these types of situations, many local governments must turn to their own local ethics ordinance.

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[26] O.C.G.A. § 36-30-6.
[27] See Story v. City of Macon, 205 Ga. 590, 54 S.E.2d 396 (1949).
[28] Hardy v. Mayor of Gainesville, 121 Ga. 327, 48 S.E. 921 (1904).
[29] Dick v. Williams, 215 Ga. App.629, 452 S.E.2d 172 (1994).
[30] Montgomery v. City of Atlanta, 162 Ga. 534, 134 S.E. 152 (1926).
[31] 1969 Op. Att'y Gen. 69-467.
[32] Sumner, "A Guide to Ethics in Municipal Government," Urban Georgia. March 1989, p. 19, 20.

Criminal Statutes

Suppose Mayor Smith owns the only hardware store in town. As a matter of course, employees in the public works department of the city occasionally go to the hardware store to pick up small tools and other items necessary in carrying out the department's daily activities. Is this action permissible? Georgia criminal law prohibits the sale of real or personal property by a public officer to a subdivision of government in which the individual serves.[33] A violation of this provision can result in imprisonment of not less than one to no more than five years.[34] Nevertheless, the statute does recognize an exception for sales of personal property that do not exceed a value of $800 per calendar quarter, as well as for sales of personal property made pursuant to sealed competitive bids.[35] Accordingly, Mayor Smith would be able to sell tools and other items to the city so long as one of these two statutory exceptions was met.[36] Does the second exception to the criminal code mean that a court today will approve an arrangement whereby a mayor's dealership sells cars to the city on competitive bid? So long as a transaction complies with O.C.G.A. § 16-10-6(c), it will not be found invalid on other grounds.

However, outside of Code section 16-10-6, just because an activity is free from criminal sanction does not mean that the transaction would be held valid in a court of law. A contract between a municipal official and the government with which they serve may still be voided on the grounds that the contract violates good public policy and the constitutional principles of public trusteeship, as well as the statutory provision barring a council member from voting on any matter in which he is personally interested.[37]

An example that graphically illustrates the potential for peril in this scenario is that of the suspended Atlanta School Board member who allegedly received city school funds while working for a contractor doing business with the school board. The former board member was found guilty in federal court of 22 counts of mail fraud and 11 counts of money laundering stemming from payments he received from a school board contractor. [38] This case dramatically illustrates the inherent dangers confronted when public office is employed as a vehicle for private gain.

The sale of real estate by a city official to his or her own city is also exempted from the strictures of the criminal law provided certain guidelines are followed.[39] A sale of real property by a city official to his or her own city is exempt from criminal sanction if there has been a disclosure to the judge of the probate court of the county in which the city is located at least 15

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[33] O.C.G.A. § 16-10-6.
[34] Id.
[35] Id.
[36] Sumner, supra note 32, at 21. See also Harris at 147 (holding that legal safeguards against conflicts of interest must be designed so as not to unnecessarily or reasonably impede the recruitment and retention by the government of those men and women who are best qualified to serve).
[37] O.C.G.A. § 36-30-6.
[38] Bill Rankin and Betsy White, Jury: Waymer Guilty of Fraud, Other Charges, Atlanta Journal and Constitution, July 22, 1993, at D1.
[39] O.C.G.A. § 16-10-6(b)(3).

days prior to the date the contract or agreement becomes binding.[40] This disclosure must show the name of the interested official, their position in the political subdivision or agency, the purchase price, and the location of the property being purchased by the city and the nature of the official's personal interest. [41]

Other potential criminal law violations arising from public service can include violation of oath of office,[42] bribery,[43] improperly influencing legislative action,[44] improperly influencing the action of a public officer or employee,[45] conspiracy to defraud,[46] and violation of campaign finance and disclosure laws. These and other potential violations are addressed in later sections of this publication.

Zoning decisions are a matter of distinctive concern for public officials. Georgia law requires that any local government official with an interest in zoning decisions must disclose the nature and extent of that interest in writing to the governing authority of the municipality in which the official is a member.[47] The courts have determined that for a conflict or self-interest to void a zoning decision, it must be financial.[48] The conflict arises "when a public officer, in the discharge of his public function, acts upon a measure relating to a specific transaction and such transaction shall directly and immediately affect his pecuniary interest."[49] Remote or speculative financial interests will not support allegations of conflict of interest.[50] The official must disqualify himself from voting on the rezoning action, as well as from taking any other action on behalf of himself or other persons intended to influence action on the matter.[51] This prohibition applies to any business or property interest the official owns when the official knows or reasonably should have known the interest would be affected by the zoning action. Any interests members of the official's family (including spouse, parents, siblings, and children) may have in the matter are also included in the prohibition.[52] The violation of this provision is a misdemeanor,[53] and it can have a very detrimental effect on the outcome of the zoning action as well. The constitutional trust provision has applications in zoning as well; the court has found that it prohibits a city planning commission chairman from participating in zoning applications filed by a corporation in which he had served as an officer, despite the chairman's abstention

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[40] O.C.G.A. § 16-10-6(c)(3).
[41] Id.
[42] O.C.G.A. § 16-10-1.
[43] O.C.G.A. § 16-10-2.
[44] O.C.G.A. § 16-10-4(b).
[45] O.C.G.A. § 16-10-5(b).
[46] O.C.G.A. § 16-10-21.
[47] O.C.G.A. § 36-67A-2.
[48] White v. Board of Commissioners of McDuffie County, 252 Ga. App.120, 555 S.E.2d 45 (2001).
[49] Department of Transportation v. Brooks, 254 Ga. 303, 317-318, 328 S.E.2d 705 (1985).
[50] Olley Valley Estates v. Fussell, 232 Ga. 779, 784, 208 S.E.2d 801 (1974).
[51] Id. See also Little v. Lawrenceville, 272 Ga. 340, 528 S.E.2d 515 (2000) (holding that the language of OCGA 36-67A-2 which prevents a disqualified official from taking "any other action to influence the application for rezoning" only applies to "action in his public capacity" as an elected official).
[52] Id.
[53] O.C.G.A. § 36-67A-4.

from voting and full disclosure of interests.[54] This prohibition only applies when a city official actually benefits or stands to benefit financially from an agreement, not when the conflict is purely speculative.[55]

Other Conflict of Interest Issues

Purchasing and bidding practices can create a variety of conflicts of interest. For example, most ethics codes strictly prohibit the disclosure of confidential information concerning government operations and affairs, as well as the private use of such information by the public official in pursuit of personal gain. Just exactly what is "confidential information?" Literally, it is any information that is held in the confidence that it will be kept secret. Due to the public official's role as trustee to the public, any disclosure or private use of such information would be a violation of the official's fiduciary duty. However, it may sometimes be unclear to the public official whether certain information must necessarily be kept confidential. In those situations, the most prudent course of action may be nondisclosure, at least until the official can seek advice from the city attorney. The following passage provides keen insight into the reasoning for this:

> Perhaps the most fundamental duty of a trustee is that he must display throughout the administration of the trust complete loyalty to the interests of the beneficiary and must exclude all selfish interest and all consideration of the interests of third persons.[56]

Because the public officer cannot be a trustee for competing interests, he or she must concentrate on administering the public's affairs to the exclusive benefit of the public at large. Therefore, a city official would be remiss if he or she were to provide a favorite uncle with specifications to assist in obtaining a contract when those specifications were not available to other bidders in the general public, or to provide a close friend with information that would allow that friend to begin preparation for a bid well before the rest of the public was aware that a bidding process was forthcoming.[57] These proscriptions are wholly consistent with the notion that public officers must remain absolutely loyal to the public at large, as opposed to a select group of favored individuals.

Another issue often confronted when considering purchasing and bidding practices is whether government contracts should be advertised to the public for competitive bidding, or chosen from among a select group of vendors. While most municipal charters and codes vest the governing authority with broad discretionary powers regarding purchasing decisions, fair and unbiased application of this discretion is essential to effective government. Whenever there are a sufficient number of capable vendors available for a given product or service, opening the process up to the public by advertising for competitive bids will serve to enhance the public's confidence that government is working for them, instead of "feathering the nest" of a favored

[54] See Dunaway v. City of Marietta, 251 Ga. 727, 308 S.E.2d 823 (1983).
[55] Ianicelli v. McNeely, 272 Ga. 234, 236, 527 S.E.2d 189 (2000).
[56] Bogert, George Gleason and George Taylor Bogert, The Law of Trusts and Trustees, § 543, at 217, 218 (rev. 2d ed. 1993).
[57] These actions would also violate the public works construction contracts law. O.C.G.A. §§ 36-91-20 through 36-91-22.

few selected vendors who monopolize the local market. Everyone benefits greatly when contracts are awarded based on the most economically efficient bids, and this serves to avoid the appearance of impropriety as well. However, this may not be practical in emergency situations that demand immediate attention; therefore local ethics codes should provide a reasonable mechanism for government to purchase goods and services in emergency and other situations that are not conducive to open competitive bidding.

Some municipalities have begun to use the Internet for sealed competitive bidding, including services in which pre-qualified vendors are able to bid down the price that they are offering to the city on a given item or service. The only things that the vendor sees is what place they are in. They do not know how many other vendors are participating in the auction nor do they know the current bid price. By conducting the auction in this manner, the sealed bid process is preserved. Online sealed bidding enables cities to streamline the purchasing process, allows access to a greater number of vendors, and allows the market to determine the lowest cost.

There are two primary standards of selection employed in selecting competitive bids – "the lowest bidder" versus the "lowest responsive and responsible bidder" standards. Most purchasing codes advocate the use of the "lowest responsive and responsible bidder" model whenever possible because the lowest bid might not always be the least expensive proposal over the long run. To be most effective, the bid should be tailored to fit the specific needs of the situation. There should also be precise criteria established to inform bidders as to what the purchasing authority is looking for whenever discretion is allowed. Rigorous pre-qualification of bidders can help to ensure that the lowest responsive bidder is capable of fully supplying the good or service purchased.

There are some services that are typically not conducive to competitive bidding, such as legal, engineering, accounting, etc. These services are often so distinctive to the facts of the particular situation that price cannot be accurately measured among providers, and the importance of having these services rendered properly decreases the relative importance of price considerations. The purchasing authority should be granted sufficient discretion to obtain these services by whatever method is deemed most efficient for that particular locality.

Public officials must also be wary of potential conflicts arising from lawsuits involving the city. It is not uncommon for some city officials to "help" parties who are suing the city by leaking information about the city's defense strategy that may be helpful to the plaintiffs. This activity conflicts with the official's fiduciary duty to the general public, and is clearly something public officials should not do. Additionally the city's insurer may regard this as a failure to cooperate and refuse to provide coverage for the city.

The potential situations from which conflicts of interest can arise are endless. For example, the issue of nepotism in the hiring and firing of public employees is one that often confronts public officials, and it is fraught with the perils of conflict. Giving preference to one's own family is instinctive to human nature, and it follows that most people would tend to favor those closest to them whenever the opportunity presents itself. Yet every public officer also realizes that their fiduciary duty requires the selection of those best qualified for public employment. This sometimes places the public officer in a difficult position that can become more problematic because of potential emotional factors involved when dealing with family matters. Many municipalities have adopted ordinances specifically targeting the problem of

nepotism in order to provide guidance to officials when conflicts of this manner arise.[58] All public employees should be hired within the guidelines contained in the city charter and code, and careful and impartial consideration should be given to every potential employee's qualifications.

If the city plans to hire someone to maintain the lawn at City Hall for the summer, and Councilmember Jones happens to have a 15-year old son who needs to earn some money, there is probably nothing wrong with the city paying the younger Jones a reasonable rate to do the job. As the responsibilities and compensation of the job increase, however, the officer must exercise greater caution. For example, naming the mayor's husband as chief of police (when he has spent his entire working life selling insurance) may not be in the best interests of the community. Also, disciplinary action or removal from office could become extremely difficult if problems were to develop later. Remember, avoiding the appearance of impropriety is of the utmost importance to all public officials; anything that may be construed as "favoritism" in the treatment of municipal employees should be avoided whenever possible.

For an incident illustrating how pervasive the problems of nepotism can become, consider this: the parent of a long-time assistant city clerk became mayor of a Georgia municipality. The city clerk retired one year later. An ethical dilemma subsequently developed over whether the assistant clerk could be promoted to the position of city clerk. The mayor did not intend to vote on the issue, and would not exert any influence on salary consideration for the clerk's office. Should the well-qualified assistant, an emancipated adult who lived in her own household, be allowed to occupy the position of city clerk? This example illustrates the balancing act presented by potential conflicts of interest.

Conflicts of interest are probably the most commonly discussed issue in the field of ethics. While ethics in general pertain to moral character and values, conflicts of interest focus primarily on the ethical concerns involved in a particular transaction. Thus, conflicts laws frequently have greater practical applications than many other topics contained in a code of ethics.[59]

Most persons who comply with the conflicts provisions of an ethics code would conduct themselves according to those principles regardless of the code's existence. However, while the law in general is mainly concerned with the conversion of behavioral practices into legal standards (and the penalization of departures from those standards), conflict of interest laws are primarily concerned with proscribing certain conduct to apply in particular situations and circumstances – particularly those situations where the temptation and opportunity presented might lead to breach of a public trust.[60] Therein lies the special value of conflicts laws – a definite proscription for a potentially troublesome situation. Everyone can benefit from such legislation.

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[58] See e.g. Athens-Clarke Co. Code § 1-9-13; City of Marietta Code § 4-4-6-040; City of Gainesville Code §1-6-1; City of Warner Robins Code § 18-3.

[59] See Grubiak, "Ethics, Conflicts of Interest, and Abuse of Office," Georgia County Government, November 1992, p.12.

[60] 1976 Op. Att'y Gen. U76-66.

Incompatible Offices

Holding incompatible offices is another aspect of municipal government law that is replete with the dangers of potential ethical violations. The problems arising from this issue may become even more complex in smaller municipalities, where there may be fewer persons available for public service.

In order to protect against the power of government accumulating in the hands of a select few, Georgia law restricts the ability of persons to hold multiple public offices. These restrictions also seek to prevent public officials from deriving personal economic gain out of public office. For example, a statute provides that a municipal official is ineligible to hold any other municipal office while serving as a member of the municipal governing body.[61] The prohibition against holding two offices only applies to holding two offices with the same government. What the elected official cannot do is be an employee of the same city in which he or she serves in an elected capacity. With respect to serving on boards appointed by elected officials, the general rule is that they may not appoint an elected official to the board unless there is a statutory or local legislative authority specifically allowing such an appointment.[62]

The rationale for the statutory prohibition on holding dual offices is that elected officials are charged with the duty of supervising municipal employees and operations and it creates a conflict of interest for an individual to be supervising himself or herself. Accordingly, the Georgia courts have held that city officials cannot also serve on municipal boards of education[63] or as city police officers,[64] that neither a mayor[65] nor a city commissioner[66] can serve as city manager, and that deputy sheriffs cannot serve as members of a school board for the same county.[67] The Attorney General has also declared that city officials cannot simultaneously serve on municipal planning commissions,[68] as city building inspectors,[69] as municipal court recorders,[70] nor as city clerks; [71] that a state-paid assistant district attorney may not offer for and hold a part time elective office with a political subdivision of the state (e.g., mayor);[72] that coroners or deputy coroners cannot also serve as sheriffs,[73] deputy sheriffs,[74] or Georgia Bureau of Investigation Division of Forensic Sciences employees;[75] and that an impermissible conflict of

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[61] O.C.G.A. § 36-30-4.
[62] See e.g. Development Authorities Law, O.C.G.A. § 36-62-5.
[63] See Matthews v. Morris, 169 Ga. 723, 151 S.E.2d 391 (1930).
[64] See Fowler v. Mitcham, 249 Ga. 400, 291 S.E.2d 515 (1982).
[65] Welsch v. Wilson, 218 Ga. 843. 131 S.E.2d 194 (1963).
[66] Board of Commissioners v. Montgomery, 170 Ga. 361, 153 S.E. 34 (1930).
[67] See Black v. Catoosa County School District, 213 Ga. App.534, 445 S.E.2d 340 (1994).
[68] 1971 Op. Att'y Gen. U71-107.
[69] 1962 Op. Att'y Gen., p.333.
[70] 1983 Op. Att'y Gen. U83-61.
[71] 1967 Op. Att'y Gen. No. 67-36.
[72] 2002 Op. Att'y Gen. U02-7.
[73] 1997 Op. Att'y Gen. U97-18.
[74] Id.
[75] 1997 Op. Att'y Gen. 97-21.

interest arises when a member of a county Board of Elections and Registration is also the full-time chief clerk of that Board.[76] Likewise, the historical custom of allowing the mayor of a municipality to serve as the presiding judge in the municipal court of that community has been declared an impermissible holding of two offices by the Judicial Qualifications Commission.[78] One of the few exceptions to this rule is that the Attorney General has declared that members of the Georgia General Assembly may simultaneously serve as a member of an advisory planning commission created by intergovernmental agreement.[79]

In some smaller jurisdictions, an elected municipal official may serve and receive compensation as a part-time city clerk, fire chief, street superintendent, or a host of other positions. This may seem necessary due to the fact that persons otherwise qualified to serve in these roles are either uninterested or unavailable. However, such situations can still lead to potentially troublesome consequences due to possible conflicts of interests as well as violations of the prohibition on holding dual offices. For example, the Supreme Court of Georgia held in Columbus, Ga. v. Board of Water Commissioners[80] that a conflict of interest would exist if a council member were to serve concurrently on the board of water commissioners and the city council of Columbus, because the city council serves a supervisory function over the board. The council member's position on the board of water commissioners would not allow him to make completely unbiased judgments with respect to his supervisory duties as a member of the city council, creating the potential for substantial conflicts.[81] The fact that Columbus is one of the state's larger municipalities further illustrates the inherent nature of these issues in all governments.

One of the most important duties of public officers entails the supervision of those employees who carry out the daily operations of government. How can an officer exercise the unbiased judgment that is central to the administration of effective government when it is his or her own actions that the officer is charged with supervising and evaluating? No matter how honorable the officer may be, the simple answer is that it is impossible for that person to measure his or her own job performance objectively. To some extent, a supervisor must maintain a relationship of master/servant between him or herself and those employees whose duties he or she oversees, but this relationship is not possible when the master is the same person as the servant. Therefore, holding multiple offices in which one office is charged with the supervision of the other cannot only cause legal problems for the public officer but problems of efficiency in government as well.

The Georgia Supreme Court addressed this issue in Welsch v. Wilson,[82] which held that a mayor was prohibited from being employed by the city to perform services usually rendered by the city manager. Because the mayor's official responsibilities included evaluating the performance of the city manager, the Court held that allowing the Mayor to serve in both offices was in violation of the statutory prohibition against serving as both master and servant.[83] This

[76] 2004 Op. Att'y Gen. U04-2.
[78] See Judicial Qualifications Commission Op. No. 196 (1994).
[79] 1997 Op. Att'y Gen. U97-11.
[80] Columbus, Ga. v. Board of Water Commissioners, 261 Ga. 219, 403 S.E.2d 791 (1991).
[81] Id.
[82] Welsch v. Wilson, 218 Ga. 843, 131 S.E.2d 194 (1963).
[83] Id.

remains true even if the elected official is not monetarily compensated for performing the duties of a city employee.

There can also be conflicts between a public officer's private employment interests and his or her "official" interests. For example, a public officer who is also an attorney may not initiate or defend a lawsuit if that lawsuit seeks to defeat the official actions of other public officers.[84] In one case, a city attorney challenged the mayor's veto of his reappointment. The city attorney was represented by a lawyer who happened to also be the municipal court judge.[85] According to the Court, the municipal court judge should have been disqualified as legal counsel to the action because the municipal court judge, a public officer, was acting as an attorney for personal financial gain by initiating a lawsuit which sought to defeat the official actions of another public officer (the mayor). The court did not feel that this was in the public's best interest, and therefore the municipal court judge was not allowed to represent the city attorney in that action.[86]

The impression created when a municipal officer represents a private interest before the very government that officer has been elected to serve can be quite damaging. The public may presume that simply because an elected officer is involved in the matter, that matter will be treated differently than it would be under ordinary circumstances. Whether the officer exercises undue influence to help the cause of the party he represents may not even matter, because the damage caused by the appearance of impropriety will already be done. Regardless of how the officer handles this incident, the perilous appearance of impropriety may very well taint the entire situation.

Private employment in addition to public office is necessary in most municipalities. However, the public official should take care not to engage in private activities that will inevitably lead to conflicts of interests. This may be difficult at times, but sacrifice is often a necessary element of public service. Those who serve their communities often must forgo some opportunities for personal profit. While the general public may not be aware of the extent of these sacrifices, many citizens do appreciate the loyal and unbiased service these officials provide for their communities.

The occupation of public office represents a public trust, and the recruitment and retention of those citizens most capable of serving effectively is essential to our form of government's continued success. Therefore, a fair balance must be struck between protecting the integrity of government while at the same time not unnecessarily infringing upon the financial independence of those who serve in public office. While the various municipalities demand differing degrees of commitment in terms of time and energy from their officials, each government should strive to insure that public service does not impose financial hardship upon those who serve. Striking the appropriate balance to fit the circumstances of each individual city is not always easy, but doing this will lead to more effective government and will help avoid difficult situations in the future.

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[84] See Stephenson v. Benton, 250 Ga. 726, 300 S.E.2d 803 (1983).
[85] Id.
[86] Id.

Elected officials must be wary of holding multiple memberships on municipal boards and commissions. The Attorney General has opined that a member of a city commission should not serve in that capacity and at the same time serve on a city planning and zoning board,[87] nor should a person serve both as a city commissioner and a trustee for a city school board.[88] Because these "committees" are literally analogous to public offices, the same prohibitions that apply to holding multiple offices apply here as well. These prohibitions seek to insure that those who are charged with supervising the formulation and implementation of public policies exercise clear and unbiased judgment. It is very difficult for a public official to exercise unbiased judgment with respect to policies he or she helped to formulate, and responsible government demands that those who formulate public policy not be the same ones charged with implementing those same policies.

A similar instance of impropriety can occur where an official board has the power to appoint an office, and subsequently exercises that power to appoint one of its own members to that office (unless the statute conferring the appointing power expressly authorizes self-appointment).[89] This type of action could clearly lead to conflicts by allowing members of the board to exercise their influence as insiders to attain the position. Incompatibility occurs when a public officer serves multiple constituencies, which may consequently necessitate the representation of inconsistent interests.[90] Possible conflicts that may arise between these independent governing bodies and the different constituencies they represent illustrate the potential dangers involved in trying to serve two different "masters."

The Georgia Constitution contains certain provisions designed to prevent the holding of incompatible offices. For example, the constitution provides that upon any state, county, or municipal elected official qualifying in either a general or special primary or election for another state, county, municipal, or national elective office for a term which will begin more than thirty days prior to the expiration of the official's current term of office, said official's current office shall be declared vacant.[91] This provision is designed to give the potential candidates for the vacated office time to qualify for the election.

Another complicated scenario arises when an elected official serves in a volunteer capacity. This frequently arises with respect to volunteer fire departments. Determining whether an elected official can participate as a member of the volunteer fire department requires a thorough examination of the relationship between the volunteer fire department and the local government and the existence and amount of compensation paid to the firefighters. If the fire department is a branch of the city government or is subject to supervision by the governing authority, the prohibition on holding dual offices will most likely continue to apply. If, however, the volunteer fire department is a completely independent organization with which the city contracts for fire protection services and is not established in the city charter, subject to city personnel policies, or otherwise subject to oversight by the local governing authority, a court may find that service as an elected official and volunteer firefighter does not violate the state law prohibition on holding two offices. Georgia law does allow members of the governing authority

[87] 1971 Op. Att'y Gen. U71-107.
[88] 1982 Op. Att'y Gen. U82-27.
[89] Fowler, supra note 58, at 400.
[90] See 1978 Op. Att'y Gen. No. 78-32.
[91] Ga. Const. Art.II, § II, Par.V.

of a municipality or county to serve as volunteer firefighters for that municipality or county so long as the individual serving in both capacities receives no compensation for services as a volunteer firefighter other than actual expenses incurred, a per diem for services, contributions to the Georgia Firefighter's Pension Fund, worker's compensation coverage or any combination of the foregoing.[92]

An additional factor that might prove important in the volunteer firefighter scenario is the elected official's position within the volunteer fire department. As a regular member of the volunteer fire department, an elected official would be receiving the same pay per call that any other volunteer firefighter receives. However, if the elected official holds an office in the volunteer fire department, such as chief or assistant chief, and receives more than minimal pay, the potential for legal or ethical conflict increases, especially if the city is a source of operating funds or equipment for the volunteer fire department. Will the elected official be tempted to approve greater funding of equipment for the volunteer fire department if he or she becomes a member or officer of the department? Code section 36-20-22 establishes that dual service is legal as long as certain specified conditions are met. However, the potential for divided loyalties between the overall needs of the general community and the needs of the fire department still exists. The Attorney General has declared that dual service as a volunteer firefighter and a member of a city council or county commissioner does not appear to violate either code section 36-30-4 or code section 45-2-2.[93] That said, he has emphasized the need for cities and counties confronted with this situation to determine whether a common law conflict of interest exists on an individual case-by-case basis in accordance with the facts of each situation.[94]

The "revolving door" issue is also one that has received considerable attention as of late. This occurs when an elected official leaves public office to become an employee of the city, to do business with the city, or to represent others who do business with the city (i.e. "lobbying"). These activities can be ripe with the appearance of impropriety.

Most ethics codes prohibit public officers from representing private parties regarding any matters the officer worked on while in office. Allowing former officers to do this would be considered a violation of the public trust, because the former officer's efforts would be tainted by confidential information acquired while in office. The purpose of these regulations is obviously to create a cooling-off period between the time an employee leaves government service and the time he or she appears before the agency as an advocate for private interests.[95] Additionally, there should be regulations preventing former officers from appearing on behalf of private interests before their former governmental authority for a particular interval of time. For example, the City of Kennesaw Code of Ethics prohibits the city from entering into any contracts with, or taking any official action favorably affecting, any person or business represented by a person who has been a member of the governing authority within the 12 month period directly preceding such action, except under specially delineated circumstances.[96] Such prohibitions

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[92] O.C.G.A. § 36-60-23.
[93] See 1998 Op. Att'y Gen. U98-8.
[94] Id.
[95] Carpinello, George. "Postemployment Restrictions on Government Employees: Closing the 'Revolving Door'," Ethical Standards in the Public Sector: A Guide for Government Lawyers, Clients, and Public Officials. Salkin, Patricia E. ed., p.29 (1999).
[96] City of Kennesaw Code of Ethics § 2-97,

prevent former officials from exploiting their political influence to achieve favorable results on behalf of private clients in a manner that is not available to the public-at-large.[97]

Other laudable measures in this area include preventing public officials from working on contracts that affect their former employers, and provisions that prohibit government employees from negotiating future employment with any parties who have matters pending before the official in his or her official capacity.[98] These regulations provide safeguards to the public that their elected officers will not use their offices as vehicles for personal profit. The actions proscribed here are commonly called the "revolving door," in recognition of the fact that persons may transfer between private employment and public office for the primary purpose of reaping tremendous financial rewards.

Former officeholders should not be given undue preference for employment within their government once their terms have expired. As with any other public employee, they should be hired and promoted based solely on their qualifications and the merits of their service. The former officer who unduly wields influence to secure a government position upon leaving office may violate precepts of good public policy, and such hires will not serve the best interests of efficient government if the former officer is not the best qualified candidate for the job.

Prohibitions on the holding of incompatible offices and employment are a demanding yet essential function of a valuable ethics code. Clear regulations need to be established, but these regulations also need to be flexible enough to apply in a plethora of situations. This will assist public officials in determining which course of action is appropriate in difficult situations, as well as serving to assure the public that their elected officials are striving to serve the best interests of everyone in the community.

[97] Carpinello, George. "Designing Municipal Ethics Codes," Urban, State, and Local Law Newsletter, Volume 16, Number 1, Fall 1992, p.8.
[98] Id.

Open Meetings and Open Records

The topic of open meetings and open records is one of central importance to the public's perception of how government operates. A government that functions in secrecy, meeting behind closed doors and restricting public access to information about its operations, serves to alienate and discourage those citizens who wish to participate in its affairs. Therefore, the Georgia legislature has promulgated laws to facilitate open communications between citizens and their government, while at the same time attempting to provide for reasonable constraints where necessary for the efficient operation of government.

In 1992, GMA published a very comprehensive guide of the key features of the open meetings and open records laws for municipal officials entitled Government in the Sunshine: Open Meetings/Records Guide for City Officials; the ninth edition of the guide was published in June of 2010. Due to the extensive coverage this subject receives in that publication, this chapter will be limited to a brief discussion of some of the key issues addressed there. To obtain a copy of the guide, please visit the GMA website at www.gmanet.com.

Open Meetings

The Georgia statutory provisions for Open Meetings are contained in code section 50-14-1 et. seq. The Open Meetings Act contains broad definitions in order to insure that almost every type of public entity will be subject to its provisions. A meeting falls under the Act whenever a quorum of the members of a governing body assemble according to a schedule or notice, at a specified time or place, to discuss official business, policy, or any public matter.[99] Thus, spontaneous and unplanned gatherings are not intended to qualify as meetings under the Act. Other examples of meetings not covered by this provision are conventions or large social events that a quorum of the governing body happens to attend. The statute declares that all meetings as defined in the statute shall be open to the public, and consequently, any action taken at such a meeting that is not open to the public shall not be binding, if challenged in a timely manner (as established by the code).[100] Thus, determining whether a meeting meets the criteria provided for in this Act becomes a major consideration in planning such events.

Unless a meeting falls clearly within one of the specific exemptions to the Open Meetings Act, it is recommended that legal counsel be obtained before closing the meeting to the public. This is particularly important considering that the Act subjects individuals who conduct or participate in closed meetings in violation of the Act to criminal sanctions as well as holding them liable for attorney's fees and other litigation costs incurred by the complaining party.[101] Council members have also been recalled for failing to abide by the open meetings act. In 1997, citizens of Auburn, GA initiated a recall against the mayor and two council members when they discussed closing the police department in a closed meeting.[102]

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[99] O.C.G.A. § 50-14-1(a)(2).
[100] O.C.G.A. § 50-14-1(b).
[101] O.C.G.A. §§ 50-14-5, 50-14-6.
[102] Phillips v. Hawthorne, 269 Ga. 9, 10, 494 S.E.2d 656 (1998).

For an example of how the Open Meetings Act can affect seemingly innocuous behavior, consider a spontaneous and informal gathering of a quorum of a city council over a cup of coffee at the local diner after the city council meeting has ended. Will this be considered a spontaneous gathering, or does it qualify as "planned?" Could this "gathering" lead to the filing of criminal charges against the council members present? What would be the consequences if a local reporter happened to stop by and see this "gathering?" These are the types of questions that public officials must ask in attempting to comply with the Open Meetings Act. In this instance the appearance of impropriety created by this gathering should be sufficient to alert elected officials not to engage in this behavior. While the officials may be using this opportunity merely to get to know each other as individuals or discuss sports events or family news, members of the media and of the public may infer that public business is being discussed and decided in an unofficial and surreptitious fashion.

Examples of how the Open Meetings Act has been treated in the courts include Steele v. Honea,[103] in which the Georgia Supreme Court held that a public official involved in a violation of the Open Meetings Act could be subject to recall for that action under the Recall Act of 1989 (although the circumstances did not warrant recall in that particular case), and Maxwell v. Carney,[104] in which the Court determined that the intent of the Open Meetings Act was to provide advance notice to all citizens of upcoming meetings rather than physical access to all members of the public. These decisions illustrate the far-reaching effects of the Act as well as its potentially severe implications.

Open Records

The Open Records Act, contained in O.C.G.A. §§ 50-18-70 through 50-18-76, allows a party who is denied access to open records to recover attorney's fees and litigation costs if the denial is not substantially justified. A person who knowingly and willfully denies access to public records not subject to an exemption under the Act is subject to criminal liability in the form of a misdemeanor and can be fined up to $100. The GMA guidebook suggests that a city develop open records guidelines and policies now, rather than waiting until the onset of an open records "crisis" at a later date.

In McFrugal Rental of Riverdale, Inc. v. Garr,[105] it was held that the provision in the Open Records Act allowing the custodian of public records to charge a fee to members of the public must be narrowly construed, allowing the imposition of a fee only when the citizen seeking access requests copies of documents or other actions by the custodian that involve unusual administrative costs or burdens. Accordingly, a fee may not be imposed when a citizen merely seeks to inspect records that are routinely subject to public inspection (such as deeds, ordinances, zoning maps, etc.), and the custodian of the records carries the burden of demonstrating the reasonableness of any fee imposed. Also illustrative of the courts' treatment of this law is Dortch v. Atlanta Journal,[106] in which the Court held that cellular telephone bills which include numbers called from city cellular telephones are subject to the Open Records Law

[103] Steele v. Honea, 261 Ga. 644, 409 S.E.2d 652 (1991). But see Davis v. Shavers, 263 Ga. 785, 439 S.E.2d 650 (1994) (circumstances must be set out with reasonable particularity).
[104] Maxwell v. Carney, 273 Ga. 864, 548 S.E.2d 293 (2001).
[105] McFrugal Rental of Riverdale, Inc. v. Garr, 262 Ga. 369, 418 S.E.2d 60 (1992).
[106] Dortch v. Atlanta Journal, 261 Ga. 350, 405 S.E.2d 43 (1991).

and therefore must be released upon request, despite potential increases in telephone costs to the city and the resulting invasion of privacy of those citizens whose unlisted numbers happen to be called by the city official.

Alleged violations of the Open Meetings/Open Records Acts in Georgia often engender high-profile controversies that can be very embarrassing for public officials. The ideals embraced in these laws represent the epitome of our democratic system – government of the people, for the people, and by the people. Great care should be taken to avoid even the appearance of improperly circumventing these laws.

Campaign Finance and Disclosure

It is commonly perceived that campaign money buys access, which can in turn buy influence. In this respect the field of campaign finances closely resembles that of influencing legislation and lobbying, and regulations affecting both areas share many of the same objectives.

The code provisions which regulate campaign financing and disclosure in Georgia can be found in O.C.G.A. §§ 21-5-30 through 21-5-36. While violation of the campaign finance disclosure laws is punishable as a misdemeanor, candidates should also remember that even allegations of a violation of these laws can be used as an effective tool against an opponent in an election.

Campaign Finance Provisions

The first major provision of the campaign finance laws requires that all campaign contributions must be made directly to the candidate or the candidate's campaign committee.[107] Other requirements include the designation of a chairperson and treasurer for every campaign committee, separation of campaign funds in a campaign depository account, and aggregation of all separate contributions of less than $100.00 knowingly received from a single source.[108] Campaign committees must register with the Secretary of State at the time the committee is formed, regardless of the amount of money to be raised or expended.[109] These requirements seek to insure that candidates remain accountable for the funds they obtain from the populace. In addition to state law, candidates should be aware of the ever increasing complexity of federal campaign finance laws.

The making and accepting of anonymous contributions are prohibited by state law, and any contributions so received are to be reported and deposited into the state treasury.[112] These regulations, which result from balancing an individual's right to contribute against the public's interest in fair elections,[113] seek to insure that campaigns are financed openly and honestly; allowing anonymous contributions would be an invitation to fraud for the less scrupulous members of society.

The Ethics in Government Act also prohibits agencies or those acting on behalf of agencies from making any contribution to any campaign committee, political action committee, political organization or candidate.[114] The definition of agency as used in this section extends to

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[107] O.C.G.A. § 21-5-30(a).

[108] O.C.G.A. § 21-5-30(b), (c), (d). But see State Ethics Commissioner v. Moore, 214 Ga. App.236, 447 S.E.2d 687 (1994) (holding that candidate could not be penalized for failing to disclose contributions where disclosure report was prepared by campaign treasurer who did not know of common source and candidate did not review report).

[109] 1985 Op. Att'y Gen. No. 85-51.

[112] O.C.G.A. § 21-5-30(e).

[113] See R. Perry Sentell Jr., The Omen of "Openness" in Local Government Law, 13 Ga. L. Rev. 97, 114 (1978).

[114] O.C.G.A. § 21-5-30.2.

counties and municipalities alike; therefore counties and municipalities are prohibited from making any campaign contributions. Furthermore, campaign committees and the like are constrained from accepting campaign contributions from any agency. Because so many uses of public facilities and equipment could be construed as "campaign contributions" in the context of an officer's bid for re-election, the code specifically states that nothing prohibits "the furnishing of office space, facilities, equipment, goods, or services to a public officer for use by the public officer in such officer's fulfillment of such office."[115]

It is not too hard to imagine a situation where a municipal official may want to solicit monetary or other contribution from city employees on behalf of the official or another candidate. However, it is punishable as a misdemeanor for a public official to coerce, directly or indirectly, any other public official or employee to pay, lend, or contribute any sum of money or anything else of value to any person, organization, or party for political purposes.[116] The distinction between solicitation and coercion may not always be as clear as one would like; therefore extreme caution should be exercised in this arena. Even if the public official intends no harm in soliciting, the public employee may feel coerced to contribute out of concern for job security. Accordingly, everyone is better off if this situation is avoided entirely.

Financial Disclosure Requirements

The transactional disclosure and disqualification methods of avoiding conflicts of interest can also be utilized in concert with campaign finance laws. For example, both an applicant before a zoning board and opponents to any rezoning actions must disclose to the local governing authority any contributions totaling $250.00 or more made to local officials who will act upon the application.[117] It has also been suggested that municipalities can go even further and disqualify any person who has made contributions to candidates for municipal office in excess of a certain amount from doing any business whatsoever with the municipality.[118] This type of provision eliminates the appearance of contributors obtaining undue access to public officials. The key here is flexibility; the municipality does not want to unduly burden candidates from receiving unprejudiced contributions while at the same time safeguarding the public's interest in unbiased government.

A candidate for municipal office must file reports with the Georgia Government Transparency and Campaign Finance Commission.

(A) For any person making a contribution of more than $100.00, include
   a. The amount and date of receipt,
   b. The name and mailing address of the contributor
   c. If the contributor is an individual, the contributor's occupation;

   Note: Contributions include the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events coordinated for the purpose of raising campaign contributions.

[115] Id.
[116] O.C.G.A. § 45-11-10.
[117] O.C.G.A. § 36-67A-3
[118] Carpinello, "Designing Municipal Ethics Codes," Urban, State, and Local Law Newsletter, Vol. 16, No. 1, Fall 1992, p. 7.

(B) For any person receiving an expenditure of more than $100.00, include
    a. The amount and date of expenditure,
    b. The person's name and mailing address,
    c. If the recipient is an individual, the recipient's occupation and employer, and
    d. The general purpose of the expenditure;
(C) For any lending institution or party making a loan, advance, or other extension of credit, include
    a. The names, addresses, occupations, and places of employment of all persons having any liability for repayment of such loan, and
    b. If any such persons shall have a fiduciary relationship to the lender;
(D) Any corporate, labor union, or other affiliation of any political action committee making a contribution of more than $100.00;
(E) For any investment made with funds of a campaign committee, independent committee, or PAC kept separate from the committee's deposit account, include
    a. The name of any entity or person with whom an investment is made,
    b. The initial and subsequent amount of the investment if the investment was made within the reporting period, and
    c. Any profit or loss from a sale of the investment made during the reporting period; and
(F) The total debt owed on the last day of the reporting period.[119]

The disclosure requirements make no distinction between in-kind and monetary contributions. Therefore, items such as food and beverages provided at a reception sponsored by a candidate's supporters should be reported as a contribution, provided the total value of such items is at least equal to the $100.00 statutory minimum. Similarly, the donation of mailing lists would not have to be reported unless the value of such lists exceeded the statutory amount. The Attorney General has indicated that elected officials are not required to report the estimated value of his or her appearance at a publicly or privately sponsored event as a campaign contribution where the purpose of their appearance at that event is not designed to bring about nomination or election.[120] Expenditures made independently of a candidate, including those made in support or opposition of a candidate, are also subject to certain dollar limitations and reporting and registration requirements in the Ethics in Government Act.[121]

Georgia has moved to an almost exclusively electronic reporting system. Candidates seeking election to county or municipal offices must use electronic means to file their campaign contribution disclosure reports with the appropriate official upon having raised or spent a minimum of $20,000.00 in an election cycle.[123] Political action committees, independent committees, and other persons required to file must file electronically upon having raised or spent $5,000 in an election cycle. However, all filers are encouraged to file electronically to ensure that their reports are received in a timely fashion by the Commission.

Campaign financing disclosure reports are to be filed by all candidates 45 days and 15 days before the primary election, 10 days after the primary election, 15 days before the general

[119] O.C.G.A. § 21-5-34(b)(1).
[120] 1997 Op. Att'y Gen. U97-1.
[121] O.C.G.A. § 21-5-34(f).
[123] O.C.G.A. § 21-5-34.1(c).

or special election, and finally, not later than December 31 of the year in which the election occurs.[127] If a candidate is unopposed in a primary or general election and receives no contribution for more than $100, the candidate is only required to make the initial and final reports.[128] The responsibility to file these reports falls upon the chairman or treasurer of the campaign committee, as well as the candidate.[129] A candidate should remember that any personal funds, whether used by the candidate himself or given to the committee, must be reported as well.[130]

All public officers and candidates for public office are required to file a financial disclosure statement for the previous calendar year with the Georgia Government Transparency and Campaign Finance Commission no later than July 1 of each year.[131] This statement shall identify

(1) All monetary fees and honorarium the filer has accepted, with a statement identifying the person from whom it was accepted;
(2) All fiduciary positions held by the filer, listing the title of each position, the name and address of the business entity, and the principal activity of the business entity;
(3) The name, address, and principal activity and office held by the filer in any business or investment in which the officer has a direct ownership interest in either 5% of the total ownership of such business, or if such ownership interest has a net fair market value of $5,000.00 or more;
(4) Each tract of real property the filer or filer's spouse has a direct ownership interest in that has a net fair market value of $5,000.00 or more, including the county and state, a general description of the property, and whether the fair market value is between $5,000.00 and $100,000.00, between $100,000.01 and $200,000.00, or over $200,000.00; and
(5) All annual payments in excess of $10,000.00 received by the public officer or any business entity described in paragraph 3 above;
(6) The name occupation, employer, and the principal activity and address of the employer for the filer and filer's spouse; and
(7) The name of any business, subsidiary, or investment known to the filer and exclusive of the filer's individual stocks, bonds, and mutual funds in which the filer's spouse or dependant children own a direct interest that is more than 5 percent of the entire value of the business or investment, that is valued over $10,000.00, or in which the spouse or dependant child serves as an officer, director, equitable partner, or trustee.[132]

Failure to file a timely and complete campaign finance report can subject a candidate to significant penalties. Unless the only flaw is a technical defect, which will be discussed later, the candidate is subject to the following penalties:

(1) $125.00 late fee if the report is filed late,

[127] O.C.G.A. § 21-5-34(c).
[128] O.C.G.A. § 21-5-34(d).
[129] O.C.G.A. § 21-5-30.
[130] Kaler v. Common Cause of Georgia, 244 Ga. 838, 262 S.E.2d 132 (1979).
[131] O.C.G.A. § 21-5-50.
[132] O.C.G.A. § 21-5-50(b).

(2) $250.00 late fee if the report is not filed by the fifteenth day after the due date,
(3) $1,000.00 late fee if the report is not filed by the forty-fifth day after the due date,[133]
(4) Up to $1,000.00 for every violation in the report,
(5) Up to $10,000.00 for a second violation of the same provisions, and
(6) Up to $25,000.00 for each third or subsequent violation.[134]

If a candidate files a report that is only inaccurate due to a technical defect, the candidate has 30 days from the date of the complaint to correct the filing, and the complaint will be disposed of without filing or penalty. Technical defects include errors such as an incorrect or missing date, an incorrect or missing contributor's occupation, an incorrect or missing address or email address, an incorrect or missing employer, accounting errors, or any similar defects. In addition, the Georgia Government Transparency and Campaign Finance Commission may waive fees or penalties, if the imposition of such fee or penalties would impose an undue hardship on the person required to pay the penalty or fee.[135]

The value of personal services performed by persons who serve with compensation from another source are to be considered as contributions, and must be disclosed accordingly.[136] However, services for which the volunteer receives no compensation, from any source, are not subject to the reporting and disclosure requirements. This distinction takes on special significance when the services are provided by public employees or employees of regulated utilities. These persons can volunteer on their own time to a political campaign, but they cannot volunteer their services to a campaign for the time when they are simultaneously receiving compensation from their employer.

A potentially troublesome situation exists where a supporter tells a candidate that he is going to contribute some money to the candidate's campaign, but rather than doing it directly he is going to give the money to two or three people and let them make the contribution to the candidate on his behalf. Expenditures made on behalf of a candidate by an individual must be aggregated and disclosed as contributions, regardless of whether those expenditures are given directly to the candidate.[137] Accordingly, a supporter cannot do an end run around the disclosure laws by disbursing campaign contributions through multiple donors.

The disclosure of all sources of campaign financing is an important step in informing the public as to who may be possible sources of influence on the candidate once he or she takes office. This process is instrumental in building confidence in public officials, and candidates for public office should eagerly comply with both the spirit and the letter of all such provisions. Campaign

[133] O.C.G.A. §§ 21-5-34(k) and 21-5-50(f).
[134] O.C.G.A. § 21-5-6(b)(14)(C)(i).
[135] O.C.G.A. § 21-5-6(b)(14)(C)(i).
[136] 1983 Op. Att'y Gen. No. 83-1 (indicating that the value of any services performed by employees of a regulated public utility corporation on behalf of a campaign would constitute prohibited contributions, if those employees are performing such services on company time, while they are on duty, drawing or eligible for their salary or hourly pay). See also 2000 Op. Att'y Gen. U00-4 (indicating that any special treatment of public officials by such public utilities may need to be disclosed under the Ethics in Government Act and failure to do so could subject the recipients to legal action).
[137] O.C.G.A. § 21-5-31.

financing is a popular topic of concern for political reformers today, and the premise behind open government depends on this information being made available to the public. The public official who displays complete candor in this area is doing a favor to both herself and to her constituency.

For additional information regarding campaign finance please contact the Elections Division of the Secretary of State and the Georgia Government Transparency and Campaign Finance Commission. Their respective websites are www.sos.state.ga.us/elections and www.ethics.state.ga.us/.

Lobbying, Improper Influence, & Abuse of Office

Lobbying

Many people consider "lobbying" to be one of the most infamous activities in politics today.[138] However, "lobbying" may also be one of the least understood and most misused terms in our political vocabulary. Most of the misunderstanding may be due, at least in part, to negative publicity focused upon lobbyists at the federal level by some in the national media and others from outside the political system. Lobbying actually has a rich tradition in our nation's history, and if it is exercised within reasonable guidelines it has the potential to render very important functions for our political process.

Lobbying is defined by Webster's New Collegiate Dictionary as "attempting to influence or sway a public official toward a desired action." At first glance, this does not seem to indicate anything evil or sinister. However, many individuals who are unfamiliar with the political process feel that "lobbying" implies something that is dishonest and possibly harmful to their best interests. While in a majority of cases lobbying may actually facilitate action that is in the public's best interests, both lobbyists and government officials must take exceptional care to conduct themselves according to the highest ethical standards in order to maintain the public's trust.

Lobbying has a long and colorful history in Georgia. Due to the detrimental economic effects of Reconstruction and the corresponding widespread opportunities for political abuse available at the time, lobbying was made a crime in the Georgia Constitution of 1877.[139] This prohibition was retained until the extensive 1983 constitutional revisions deleted that provision and designated it for legislative treatment. The General Assembly responded to this in 1992 by enacting legislation to provide for the comprehensive regulation of the conduct of public officials and lobbyists.[140] Compliance with these laws is mandatory, but they provide merely a starting point for the public official who is truly concerned with providing honest and effective leadership to all of his or her constituents.

The state law provides that anyone acting as a lobbyist must register with the state and is required to comply with all ensuing restrictions.[141] In the common vernacular, the word lobbyist usually implies a person who is paid to approach the government and argue towards specific political goals or in support of specific causes. Georgia's statutory definition of a lobbyist is a great deal broader. Under Georgia law, lobbyists include any natural persons who either undertake for compensation to promote or oppose the passage of or spend more than $250.00 per calendar year (excluding certain personal expenses) to promote or oppose the passage of any legislation by the General Assembly or any committee thereof, the approval or veto of legislation

[138] See McVay and Stubbs II, Governmental Ethics and Conflicts of Interest in Georgia, The Michie Company (1988), p.150.
[139] Ga. Const. Art.I, Sec.II., Par.V.
[140] O.C.G.A. §§ 21-5-1 et. seq, 28-7-3 et. seq.
[141] O.C.G.A. § 21-5-71.

by the Governor, the passage of any ordinance or resolution by an elected county or municipal official, any committee of such officers, or an elected member of a local board of education, including, in limited circumstances, employees of the state executive and judicial branches.[142] This definition applies to any officers who participate in this type of activity on behalf of their own personal interests, but municipal elected officers who lobby as part of their official duties are not considered "lobbyists."[143] Note that in order for a person to be a "lobbyist" under the statutory definition he or she must spend more than $250.00 in the lobbying effort itself or must receive compensation for approaching the government.[144] Thus, should a city official want to lobby for a favorite charity or cause free of charge, they should be able to do so without registering if they do not spend more than $250.00.

Improper Influence

Much of the turmoil concerning lobbying stems from the public's confusion as to how lobbying differs from improperly influencing legislation. This distinction, between what is lawful and what is abominable can be unclear at times, although the penalties provided for violation of these laws should provide adequate incentive to both lobbyists and public officials to carefully observe these statutes. State law prohibits any public officer from using or offering to use his influence to procure or attempt to procure the passage or defeat of legislation, in exchange for something of value to which he is not legally entitled. Improperly influencing legislation is punishable by a fine of not more than $100,000, imprisonment varying from one to five years, or both.[145] The legitimate operation of representative democracy demands that public officers serve their entire constituency with complete loyalty and impartiality, and this statute facilitates the achievement of this goal. The public will not trust officers whose loyalty is for sale, and the officer who exchanges governmental influence for personal benefits has irreparably violated his or her fiduciary duty.

Bribery

Bribery is closely related to the offense of improperly influencing legislation, though it is proscribed by a statute that carries much stiffer penalties.[146] The offense of bribery covers any action in which a public officer requests and/or receives something of value in exchange for the performance of any act related to the functions of that office. The public has every right to try to influence their public officers through legal means of petition and protest, promises of support and threats of electoral defeat; they do not, however, have the right to buy the official actions of a public officer.[147] The means employed in attempting to influence the officer are where lobbying and bribery differ; lobbying is the use of legitimate and honest means, whereas bribery involves reprehensible actions motivated by greed and corruption. Bribery carries with it a fine of up to $5,000.00 and imprisonment varying from one to twenty years.[148]

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[142] O.C.G.A. § 21-5-70.
[143] O.C.G.A. § 21-5-71(i)(7).
[144] O.C.G.A. § 21-5-70(5).
[145] Whitworth v. State, 275 Ga. App.790, 622 S.E.2d 21 (Ga. App. 2005); O.C.G.A. § 16-10-4.
[146] O.C.G.A. § 16-10-2.
[147] State v. Agan, 259 Ga. 541, 384 S.E.2d 863 (1989), cert. den. 494 U.S. 1057, 110 S.Ct. `526, 108 L.Ed. 765 (1990).
[148] O.C.G.A. § 16-10-2(b).

The harm caused by bribery does not always stem directly from the harm caused by the actions taken by the public officer, for the fact that a public officer would have taken the same action regardless of the bribe does not lessen the criminality of the bribe itself. It does not even matter if the issue for which the public officer accepts compensation concerns matters over which the officer has no authority to act. It is the acceptance or request of illicit compensation, and not the subsequent action, that will bring criminal sanctions upon the public officer.[149]

Under the bribery statute a public officer is allowed to receive items such as:

(A) Food or beverage consumed at a single meal or event;
(B) Legitimate salary, benefits, fees, commissions, or expenses associated with a recipient's nonpublic business, employment, trade, or profession;
(C) An award, plaque, certificate, memento, or similar item given in recognition of the recipient's civic, charitable, political, professional, or public service;
(D) Food, beverages, and registration at group events to which all members of an agency, as defined in paragraph (1) of subsection (a) of Code Section 21-5-30.2, are invited. An agency shall include the Georgia House of Representatives, the Georgia Senate, committees and subcommittees of such bodies, and the governing body of each political subdivision of this state;
(E) Actual and reasonable expenses for food, beverages, travel, lodging, and registration for a meeting which are provided to permit participation or speaking at the meeting;
(F) A commercially reasonable loan made in the ordinary course of business;
(G) Any gift with a value less than $100.00;
(H) Promotional items generally distributed to the general public or to public officers;
(I) A gift from a member of the public officer's immediate family; or
(J) Food, beverage, or expenses afforded public officers, members of their immediate families, or others that are associated with normal and customary business or social functions or activities[150]

These exceptions to the offense of bribery represent a compromise intended to allow public officers to perform their duties without bearing undue personal expense, while at the same time preventing the exercise of undue influence by individuals who have ample resources and access to those officers. The receiving, accepting, or agreeing to receive an item not covered in the forgoing list does not create a presumption that the offense of bribery has been committed.[151] However, some of the items will still need to be disclosed, so officials need to keep track of current disclosure requirements.

While the distinction between properly and improperly influencing legislation can be very narrow at times, it is a crucial one. No government can operate effectively if its elected officials can be bought and sold, and it is just as important for public officials to safeguard against the appearance of this as well. The public will only give the necessary trust to public

[149] See York v. State, 42 Ga. App.453, 156 S.E. 733 (1931) (reflecting the general rule that official acts need not be enforceable to render public officers liable for bribery, but must instead be "official in form" and done under color of office).
[150] O.C.G.A. § 16-10-2(a)(2).
[151] Id.

officials who consider all citizens to be equal before government, not to those who favor certain individuals according to the depth of their assets.[152] In describing how the acceptance of favors can have a detrimental effect upon the efficiency of a public officer, it has been argued:

> What happens is a gradual shifting of a man's loyalties from the community to those who have been doing him favors. His final decisions are, therefore, made in response to his private friendships and loyalties rather than to the public good. Throughout this whole process the official will claim – and may indeed believe – that there is no causal connection between the favors he has received and the decisions that he makes. He will assert that the favors were given and received on the basis of pure friendship and unsullied by worldly considerations. He will claim that the decisions, on the other hand, will have been made on the basis of justice and the equity of the particular case. The two series of acts will be alleged to be as separate as the east is from the west. Moreover the whole process may be so subtle as not to be detected by the official himself.[153]

This dramatic portrayal of the corrupting process illustrates just how fragile protecting the public interest can be. Although the public interest is no more than the aggregation of each individual's special interests, the public official must take care not to regard one person's interests to be more important than anyone else's.

Public officials need to be wary of accepting questionable gifts from lobbyists. For example, Bob Nay, former Congressman from Ohio, was convicted on corruption charges and sentenced to 30 months in prison for accepting bribes, including campaign contributions, expensive gifts, and a trip to Scotland, from Jack Abramoff.[154]

The mere fact that a campaign contribution has been disclosed in accordance with Georgia law does not eliminate its potential criminal nature if it ultimately results in some sort of "political pay-off." Money given to an office holder that is reported as a campaign contribution can still qualify as a bribe. Thus, the Ethics in Government Act's campaign disclosure and finance requirements (discussed in a previous portion of this publication) have in no way altered application of the bribery statute.[155]

Extortion

Closely related to bribery is the crime of extortion. Extortion by a public officer can be defined as the unlawful demanding and receiving by an officer, under color of office, of money

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[152] Cox, Ethics in Government: The Cornerstone of Public Trust, 94 W. Va. L. Rev. 281, 289, Winter 1991/1992.

[153] Douglas, Ethics in Government, p. 44 (1952).

[154] United States Department of Justice, "Former Lobbyist Jack Abramoff Pleads Guilty to Charges Involving Corruption, Fraud Conspiracy, and Tax Evasion," Press Release: January 3, 2006.

[155] See e.g. Agan, supra note 134, at 863 (a transfer that is a bribe as defined by the bribery statute may also come within the definition of campaign "contribution" in the Ethics in Government Act, and the fact that such a transfer must be reported does not change its character as a bribe).

or other things of value that are not due him.[156] The key elements of the offense consist of the officer's demanding or accepting compensation contrary to what that officer is legally entitled to receive for the performance or nonperformance of a lawful duty. The requirement that the demanding must occur under color of office basically means that it must be done under the pretense that the officer was entitled to the payment by virtue of his or her office. Extortion involves the oppressive misuse of official power by the exaction of money or other compensation. Therefore, where an officer reasonably believes he has the right to accept a cash bond, he is not guilty of extortion because intent to commit the crime is a required element of the crime.[157] Nevertheless, the officer's belief that the payment is not illegal must truly be rational. An officer found guilty of extortion must be removed from office.[158]

Extortion is a very serious crime, and public officials need to avoid extortion charges at all costs. For example, Rod Blagojevich is facing up to twenty years for attempting to solicit a bribe in exchange for appointment to fill a vacant Senate seat.[159]

Violation of Oath of Office

Black's legal dictionary defines an oath as "a solemn declaration, accompanied by a swearing to God or a revered person or thing, that one's statement is true or that one will be bound to a promise."[160] Many public offices require the elected or appointed official to swear to an oath upon taking office, by which the elected or appointed person promises to perform the duties of that office in good faith.[161]

In Georgia the taking of an oath is considered highly important; as a solemn promise, an officer is bound by their oath of office to perform the duties of their office both in good faith and to the best of their ability. This conviction is supported by several statutes in Georgia. Any public officer who willfully and intentionally violates the terms of his oath of office as prescribed by law shall be punished, upon conviction, by imprisonment varying from one to five years.[162] Violation of an oath of office can be considered a lesser-included offense to bribery whenever circumstances indicate that an act of bribery would necessarily have included a violation of the public officer's oath of office.[163] A related infraction occurs when a public officer authorized to administer oaths knowingly makes a false acknowledgement, certificate, or statement concerning the appearance before him or the taking of an oath or affirmation by any person.[164] The actions proscribed by these statutes are clearly contrary to the public official's

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[156] O.C.G.A. § 45-11-5.
[157] See Holt v. State, 11 Ga. App. 34, 74 S.E.2d 560 (1912).
[158] O.C.G.A. § 45-11-5.
[159] "Blagojevich indicted on 16 federal felony charges," CNN, April 2, 2009.
[160] Blacks at 1099.
[161] See e.g. O.C.G.A. § 45-3-1 (mandating that all public officers shall take certain oaths). The Georgia Supreme Court has determined that this code section applies only to officers commissioned by the Governor, and not to municipal officers not commissioned by the Governor unless there is a city charter or some other statute that requires an oath. Brewer v. Johnson, 184 Ga. 806, 193 S.E. 778 (1937).
[162] O.C.G.A. § 16-10-1.
[163] See Nave v. State, 171 Ga. App.165, 318 S.E.2d 753 (1984).
[164] O.C.G.A. § 16-10-7.

fiduciary duties, and the conscientious public official would not violate either the letter or the spirit of these laws even if they were not codified.

Additional State Criminal Sanctions

It is unlawful for a public official to coerce or attempt to coerce, directly or indirectly, any other public official or employee to pay, lend, or contribute any sum of money or anything else of value to any person, organization, or party for political purposes.[165] A person engaging in coercion is guilty of a misdemeanor.[166]

Conspiracy to defraud the state or any political subdivision has long been prohibited by statute in Georgia.[167] To conspire is defined by Webster's New Collegiate Dictionary as "to join in a secret agreement to do an unlawful or wrongful act or to use such means to accomplish an unlawful end," and conspiracy is "the act of conspiring together." Conspiracy to defraud can be committed by a municipal elected official if the official were to conspire with another person to steal property belonging to a municipality or under the control of an officer or employee thereof. Conviction calls for imprisonment ranging from one to five years.[168] The statutory definition of property has been determined to include money;[169] thus, it can safely be assumed that a conspiracy to steal municipal funds would violate this statute as well. Because conspiracy statutes can be violated regardless of how attenuated the relationship is between the alleged conspirator and the associated criminal activity, careful discretion should be exercised in handling situations that appear to be even slightly questionable from a legal standpoint.

The Georgia Constitution prohibits contracts and agreements that seek to defeat or lessen competition or encourage monopoly.[170] There is also a related statutory provision prohibiting conspiracies in restraint of free and open competition in transactions with the state or political subdivisions.[171] While these provisions ordinarily apply to bid-rigging schemes involving contractors and other private entities, they could presumably be utilized against public officers involved in such conspiracies as well. A public officer's involvement in a conspiracy to restrain competition would appear to be directly in conflict with the public's interest in honest and efficient government, and this activity could also lead to problems with federal antitrust law.

There are several statutes forbidding the misappropriation of public funds by city officials. A city official who receives, takes, or contracts to receive or take, either directly or indirectly, any part of the pay or profit arising out of any public works construction contract is guilty of a misdemeanor.[172] Furthermore, Georgia law forbids the expenditure of public funds to influence the outcome of an election.[173] Articles in a city newsletter that could be construed as attempts to influence the way citizens vote on an upcoming referendum question can violate this

[165] O.C.G.A. § 45-11-10.
[166] Id.
[167] O.C.G.A. § 16-10-21.
[168] Id.
[169] Cadle v. State, 101 Ga. App. 175, 113 S.E.2d 180 (1960).
[170] Ga. Const. Art.III, Sec.VI, Par.V.
[171] O.C.G.A. § 16-10-22.
[172] O.C.G.A. § 36-91-21(f).
[173] O.C.G.A. § 21-5-30.2.

law. Only campaign committees that have registered and filed financial reports as required by the Ethics in Government Act may expend private funds to influence voters on a referendum question.

A public officer or any other person who steals, alters, forges, defaces, or falsifies any records or documents, including minutes or digital records, shall be guilty of a felony if convicted and shall be subject to imprisonment for 2 to 10 years.[174] Thus travel expense reports and requests for reimbursement must be accurate.[175] Under this statute, willfully removing public records from the premises of the public office is considered stealing the public records.[176] The statute applies to **any** record belonging to a public office in Georgia,[177] implying that expense and travel reports must be kept on premises. As technology improves, it will be interesting to see how this statute affects public officials and employees who choose to telecommute or even take work home over the weekend.

State law also addresses malfeasance, partiality, and demanding more cost than that to which a public officer is entitled.[178] Any local elected official charged with the foregoing may be indicted by the grand jury. If a true bill is returned by the grand jury and the public officer is found guilty in a criminal proceeding, the official will be subject to fine, imprisonment, or both, at the discretion of the court. In addition, the official will be removed from the office.[179]

Federal Laws

There are several means by which federal law enforcement agencies address criminal acts of public officials. They can be grouped into three basic categories: criminal action statutes, corrupt act statutes, and honest services statutes.[180] Criminal action statutes refer to general criminal laws that define and prohibit behavior as criminal. They are not designed specifically to address actions by public officials. Any citizen, including public officials and employees, may be charged with their violation. Examples would include embezzlement, drug dealing, tax evasion, and fraud.[181]

Extortion or bribery involving public officials may be prosecuted under federal law. Two of the core corrupt act statutes employed to address state and local corruption are the Hobbs Act and the Program Fraud statute.[182]

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[174] O.C.G.A. § 45-11-1.
[175] For more information please see GMA's 2003 guide on travel policies, A Road Map to Travel Policies for Municipal Officials, available at www.gmanet.com.
[176] Id.
[177] Brusnighan v. State, 86 Ga. App. 340, 71 S.E.2d 698 (1952).
[178] O.C.G.A. § 45-11-4.
[179] Id.
[180] Gabriel, Charles D.. "The Role of the FBI in State and Local Government Corruption," Institute for City and County Attorneys (Athens: Institute of Continuing Legal Education in Georgia, University of Georgia, 2001), 5.
[181] Id. at 6.
[182] Id. at 9.

The Hobbs Act penalizes activities that interfere or attempt to interfere with the operation of commerce, and included among its prohibitions is "the obtaining of property from another, with his consent, under color of official right,"[183] which is punishable by a substantial fine and up to twenty years imprisonment.[184] The Hobbs Act is construed very broadly by the courts in order to encompass a broad range of activities that need be only minimally associated with commerce. Therefore, many actions taken by a local governing authority could fall under the Hobbs Act even though they do not actually affect commerce, so long as they might potentially pertain to commerce. Passive acceptance is sufficient for a Hobbs Act violation so long as the public official knows that he or she is being offered the payment in exchange for a requested exercise of official power.[185]

The case of Evans v. United States[186] is illustrative of how local officials can be affected by the Hobbs Act. In that case, which involved a DeKalb County Commissioner, the United States Supreme Court held that in order to prosecute for extortion "under color of official right," the government merely needs to show that the official has obtained a payment to which the official is not entitled, knowing that the payment was made in return for official acts;[187] it is not essential that the public official initiate or demand the payment. The proscribed conduct in Evans involved the commissioner's acceptance of a campaign contribution from an FBI agent posing as a real estate developer in exchange for the commissioner's assistance in an effort to rezone a tract of land. Conflict of interest in zoning laws issues as well as campaign finance laws, both discussed previously in this publication, are represented in this case. In essence, the Hobbs Act, with its potentially wide-ranging applications, represents one more potent weapon to be employed in the fight against unethical public officials.

Honest services convictions can carry extremely long prison sentences. Duke Cunningham, former Congressman from California, was sentenced to eight years and four months in prison for violating the honest services laws. The sentence is the longest sentence ever handed down to a former congressman, which shows how seriously courts take these laws.

The federal Program Fraud statute addresses the actions of those who are responsible for federal funds. At a minimum, jurisdiction is triggered when an organization such as a city or an authority receives federal benefits in excess of $10,000 involving some kind of federal assistance during a 12-month period prior to or following the act in question. The statute prohibits the following: (1) embezzling, stealing, defrauding or misappropriating property valued at $5,000 or more; (2) soliciting or accepting bribes relating to some matter involving $5,000 or more; and (3) giving, offering, or agreeing to give anything of value to influence or reward action in connection with some transaction valued at $5,000 or more.[188] For example, a chief deputy in a jail that housed federal prisoners in exchange for federal funds well in excess of $10,000 in value was indicted and convicted for accepting a bribe from a prisoner in exchange for special treatment from the deputy.[189]

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[183] 18 U.S.C.A. § 1951(b)(2).
[184] 18 U.S.C.A. § 1951(a).
[185] Evans v. United States, 112 S.Ct. 1881, 119 L.Ed.2d 57 (1992).
[186] Id.
[187] Id.
[188] Gabriel, supra note 165, at 14-15; 18 U.S.C.A. § 666.
[189] Gabriel, supra note 165, at 15-16; Salinas v. United States, 522 U.S. 52, 56-57 (1997).

Honest services statutes are available when there are no federal program funds involved, where there is no immediately identifiable quid pro quo, or when there is only one actor. The 2010 Supreme Court decision in Skilling v. United States limits the applicability of the honest services statutes to bribery and kickback schemes and not conflicts of interest or other "amorphous" cases.[190] Using this tool, federal prosecutors must prove the use of either the U.S. mail, an interstate wire communication facility such as a phone or the Internet, or an interstate common carrier such as FedEx or UPS to execute a bribery or kickback scheme.[191]

One final federal statute that bears mentioning is the False Claims Act (FCA). There are both civil and criminal penalties under the False Claims Act.[192] The FCA is violated when a false, fictitious or fraudulent claim is presented to the federal government that the person presenting it knows to be false through actual knowledge, deliberate ignorance, or reckless disregard. In addition to individuals, local governments are considered persons that can be held liable under the FCA.[193] One of the most important aspects of the FCA is that it allows private parties, called relators, to sue in the name of the federal government in lawsuits known as qui tam actions. The damages that can be levied and collected in a FCA action include civil penalties of $5,000-$10,000 per violation, with each false statement serving as a separate claim, and treble damages.[194] The federal government may intervene in the case or not, but the relator is allowed to collect a bounty of up to 25% of the recovery if the government intervenes and 30% if the government does not. The potential for treble damages and up to 30% of the recovery provides relators with a strong incentive to locate false claims and pursue these actions.

[190] Skilling v. United States, --- S.Ct. ----, 28-29, 2010 WL 2518587 (2010).
[191] Gabriel, supra note 165, at 18-19; 18 U.S.C.A. §§ 1341, 1343, 1346.
[192] 31 U.S.C.A. §§ 3729-3733; 18 U.S.C.A. § 287.
[193] Cook County, Ill. V. United State ex. rel. Chandler, 123 S.Ct. 1239 (2003).
[194] 31 U.S.C.A. § 3728(a)(7).

Codes of Ethics

> A local ethics law should focus less on punishment than on prevention, less on prohibition than on disclosure and recusal. It must also be easy and inexpensive to administer and enforce. It must establish an independent ethics board that, while possessing the power to investigate and punish, views its primary mandate as giving quick advice and providing comprehensive ethics training and education.[195]

In surveying some of the various codes of ethics now in place in municipalities across the state, it becomes apparent that many of the same themes and provisions are repeated throughout. This is due to the fact that the purposes behind these codes are shared by all democratic governments – to insure that public officials be independent, impartial, and responsible to the people they represent, that governmental decisions and policies be made within the proper channels of the governmental structure, that public office not be used for personal gain, and, especially, that the public have confidence in the integrity of its government and its officials.[196] While these goals may sometimes be stated differently, and sometimes expanded or contracted, the basic principles remain the same. Effective government demands public officials who will be held accountable to those whom they serve, and a code of ethics seeks to protect both the public and elected officials from the problems that occasionally surface in the administration of governmental affairs.

Statement of Purpose/Declaration of Intent

A common feature among ethics codes is a preamble stating the broader purposes of the legislation. The City of Jefferson Code of Ethics for City Officials has a preamble, which reads as follows:

> The public judges its government by the way public officials and employees conduct themselves in the posts to which they are elected or appointed.
>
> All government, of right, originates with the people, is founded upon their will only, and is instituted solely for the good of the whole. Public officers are the trustees and servants of the people and are at all times amenable to them. Ga. Const. Art. 1, Sec. 2, Paragraph 1.
>
> The people of this state have the inherent right of regulating their internal government. Government is instituted for the protection, security, and benefit of the people; and at all times they have the right to alter or reform the same whenever the public good may require it. Ga. Const. Art. 1, Sec. 2, Paragraph 2.

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[195] Davies, Mark. "Sources of Local Government Ethics Laws," Ethical Standards in the Public Sector: A Guide for Government Lawyers, Clients, and Public Officials. (Salkin, Patricia E., ed.), p.129.

[196] City of Snellville Code, Article I.

> Such confidence and respect can best be promoted if every public official, whether paid or unpaid, and whether elected or appointed, will uniformly: (a) treat all citizens with courtesy, impartiality, fairness, and equality under the law; and (b) avoid conflicts between their private self-interest and the public interest.[197]

This and other similar statements serve to illustrate some of the motivations behind the formulation of the code.

The declaration of intent is another common feature. This is found in most ethics codes, although it may sometimes be called a "declaration of policy," or "purpose." The declaration is generally a brief outline of the legislation that serves as a summary of its goals as well. A good example can be found in the City of Cairo Code of Ethics, which reads:

> It is the intent of this Code of Ethics that the Mayor or member of City Council shall not knowingly engage in any activity which is incompatible with the proper discharge of his or her official duties or which would tend to impair his or her judgment or actions in the performance of his or her official duties. Furthermore, members of the Mayor and Council should avoid any action which might result in or create the appearance of the following:
> (A) Using public office for private gain.
> (B) Impeding City efficiency or economy.
> (C) Affecting adversely the confidence of the public in the integrity of those who conduct the affairs and business of the City of Cairo.[198]

This declaration of intent is geared specifically towards governing the Mayor and Council; other statements of intent implicate the "Governing Authority" of the city. A good example of this is the City of Commerce, whose intent section reads as follows:

> It is essential to the proper administration and operation of the City of Commerce that the members of its Governing Authority be, and give the appearance of being, independent and impartial; that public office not be used for private gain; and that there be public confidence in the integrity of the Governing Authority. The Governing Authority finds that the public interest requires that they protect against such conflicts of interest by establishing appropriate ethical standards with respect to the conduct of the members of the Governing Authority in situations where a conflict may exist.[199]

More examples could be easily provided; suffice it to say that a declaration of policy is a helpful tool for later enforcement of the ethics code and should at least touch on these common themes: impartiality, independence, responsibility, public confidence in government integrity, and proper use of public office.

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[197] City of Jefferson Code of Ethics, Preamble. See also City of Jesup Code § 2-221, Article X.
[198] City of Cairo Code, § 1, Division B, Section I.
[199] City of Commerce Code § 2-4.

Definitions

Another common feature of many ethics codes is the definitions section. This section is quite broad in some ordinances, with numerous definitions offered in detail; in other codes this section may be much less meticulous, relying more on the common usage of the words. The definition of certain words commonly used throughout the code, such as "interest," can have great relevance upon the applicability of the code to certain situations. For example the City of Roswell has a fairly broad definition of interest:

> "Interest" means any direct pecuniary benefit, which is not a remote interest held by or accruing to a member of the Governing Authority as a result of a contract or transaction which is or may be the subject of an official act or action by or with the City. A member of the Governing Authority shall be deemed to have an interest in transactions involving:
>
> 1. Any person in the member's immediate family;
> 2. Any person with whom a contractual relationship exists whereby the member may receive any payment or other benefits unless the member is receiving a benefit for goods or services in the normal course of business for which the member has paid a commercially reasonable rate;
> 3. Any business in which the member is a director, officer, employee, or shareholder, except as otherwise provided herein; or
> 4. Any person of whom the member is a creditor, where secured or unsecured.[201]

Compare this to the City of Jesup, which employs three (3) categorical definitions of interest as follows:

> Remote interest means an interest of a person or entity, including a city official, who would be affected in the same way as the general public. The interest of a council member in the property tax rate, general city fees, city utility charges, or a comprehensive zoning ordinance or similar decisions is deemed remote to the extent that the council member would be affected in common with the general public.
>
> Incidental interest means an interest in a person, entity or property which is not a substantial interest and which has insignificant value.
>
> Substantial interest means a known interest, either directly or through a member of the immediate family, in another person or entity [if]:
>
> (1) the interest is ownership of 5% of more of the voting stock, shares or equity of the entity or ownership of $5,000 or more of the equity or market value of the entity; or
>
> (2) funds received by the person from the other person or entity either during the previous 12 months or the previous calendar year equaled or exceeded $5,000 in salary, bonuses, commissions, or professional fees or $5,000 in payment for goods, products, or nonprofessional services, or ten percent of the recipient's gross income during that period, whichever is less; or

[201] City of Roswell Code of Ordinances Part II, Chapter 2, Article VI § 2. See also City of Commerce Code § 2-5.

> (3) the person serves as a corporate officer or member of the board of directors or other governing board of the for-profit entity other then a corporate entity owned or created by the City Council; or
> (4) the person is a creditor, debtor, or guarantor of the other person or entity in an amount of $5,000 or more. Substantial interest in real property means an interest in real property which is an equitable or legal ownership with a market value of $5,000 or more.[202]

The definition of interest employed by the City of Roswell is fairly broad so that it covers a wide range of potential activities. The City of Jesup Code is drawn more narrowly, specifically allowing for certain situations to be exempted (perhaps because Jesup is a smaller community and in need of greater flexibility). This is a matter of discretion to be exercised by the individual municipality, but it should be noted that an ethics code will likely be more effective in direct proportion to the number of transactions it covers. For examples of other commonly defined terms in ethics ordinances see the GMA Sample Ethics Ordinance, available at Appendix A or online at www.gmanet.com.

Prohibitions & Exceptions

There are many different approaches employed by ethics codes to illustrate what types of conduct are acceptable and what types are prohibited. The City of Roswell Code of Ethics contains a section for "Prohibitions" which contains specific guidelines for conduct concerning topics such as gifts and private employment,[203] whereas the City of Peachtree City Code of Ethics provides several separate sections containing strict prohibitions regarding gifts, public contracts, and the use of publicly-owned property for private advantage (among others).[204] Drafting these provisions can sometimes pose dilemmas for local governments. If they are drawn too narrowly, they may not cover all of the activities that the ethics code was intended to address; if drawn too broadly, there is a danger that some resourceful officials may be able to find "loopholes" allowing them to circumvent the intent of some provisions. Flexible construction will insure that the ethics code achieves its intended result by providing enforceable guidelines that are adaptable to numerous situations.

Conflicts of interest are an item of major concern in every ethics code. While most codes contain a separate section dealing with the issue, the significance of the matter dictates that it be dealt with to some extent throughout the entire code. Different approaches utilized in codifying a conflicts policy include the City of Cairo's combination of prohibitions against conflicting direct or indirect financial interests and broad sections regarding disclosure and disqualifications,[205] the City of Marietta's expansive prohibition against current and future conflicts of interests and broad disclosure requirements,[206] and finally, the City of Commerce's detailed requirements for disclosure of interests and disqualification from acting upon any matters in which the official has an interest.[207] The City of Columbus Code of Ethics contains

[202] City of Jesup Code § 2-224.
[203] City of Roswell Code of Ordinances Part II, Chapter 2, Article VI § 3.
[204] City of Peachtree City Code §§ 62-74, 62-82, 62-86.
[205] City of Cairo Code Division C. § II, and Division D. §§ I, II, and III.
[206] City of Marietta Code of Ethics §§ 1.9, 4-1064.
[207] City of Commerce Code of Ethics §§ 2-7, 2-8.

strict prohibitions against most activities likely to result in conflicts, and contains broad disclosure requirements as well.[208] Debate in the Atlanta City Council over income disclosure laws illustrates the relevance of this issue in the political arena. Despite reluctance on the behalf of the Council, Atlanta requires most employees in decision-making roles to file disclosure.[209] Most existing codes contain similar combinations of both disclosure[210] and disqualification provisions in response to conflicts of interest, and a number of municipalities that do not have separate codes of ethics do provide legislation dealing with the issue.[211]

Boards of Ethics

The formation of an ethics board can be an essential step in implementing a comprehensive code of ethics. While some ethics codes provide for a separate board, others rely on the existing governmental authority and the courts to enforce their ethics laws. Providing the other board with sufficient powers to perform its duties (such as granting subpoena power where such delegation of power is available) may help instill confidence that the public interest is being safeguarded. Adding the additional stipulation that no member of the board may be a member of any other board, authority, commission, or committee of the city can help to insure that the members of the city's ethics board do not encounter their own conflicts of interest.

The City of Marietta Code of Ethics provides a good example of an existing board of ethics. It provides for the formation of a committee made up of three citizens, one appointed by the mayor, one appointed by the council, and the third appointed by the previous two members.[215] This committee is empowered to investigate complaints, to take evidence, and to conduct hearings concerning alleged violations of the ethics code.[216] These powers increase the ability of the board to fulfill its duties and provide assurance to the public that their complaints will be impartially evaluated.

The City of Roswell ordinance contains another good example of an existing board of ethics. Their board is composed of five residents of the city chosen by persons specifically appointed by the mayor and council members from a pool of fourteen qualified individuals who have consented to serve on the ethics boards for a period of two years.[217] The members of the ethics board are only chosen from the pool of volunteers in the event that a city investigating committee[218] determines that an ethics complaint warrants a hearing before such board. The board is empowered to hold hearings, to prescribe disclosure forms, to receive and hear complaints of ethical violations, and to investigate, respond to, and rule on complaints.[219] This

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[208] City of Columbus Charter.
[209] City of Atlanta Code § 2-814.
[210] See e.g., Town of Thunderbolt Code §§ 2-102.4, 2-102.5; City of Vienna Code §§ 36-4, 36-5.
[211] *See e.g., Athens-Clarke County Code §§ 1-3-54, 1-9-29(c).*
[215] City of Marrietta Code § 1-6021.
[216] Id., § 1-6022(d).
[217] City of Roswell Code of Ethics § 9.
[218] See City of Roswell Code of Ethics § 8. A city investigating committee is a panel consisting of three council-members and the city attorney; the members are appointed by either the Mayor or the Mayor Pro-Tem upon the filing of a written, verified complaint setting forth the particular facts and circumstances which constitute an alleged violation against the Governing Authority.
[219] Id.

allows the board to enforce the ethics code efficiently and in doing so bolsters the public's trust in their local government.

The City of Atlanta Code of Ethics provides for a seven-member board of ethics; the ordinance states that all of the members chosen "shall be known for their personal integrity and … shall be residents of and domiciled in the city."[220] It further stipulates that "the members of the board of ethics shall reflect the diversity of the City with regard to race, color, creed, religion, gender, marital status, parental status, familial status, sexual orientation, national origin, gender identity, age and disability."[221] Each member of the board of ethics is appointed by a specific organization or group of organizations within the city. The Atlanta provisions are obviously tailored specifically for that city, taking into account its size and diversity as well as the various influential political bodies within the area. This may make the specific language used in it unworkable for other cities and towns; however, some of the principles emphasized in the Atlanta Code are helpful to point out. For example, the Atlanta code of ethics provides a "for cause" removal mechanism whereby members of the board of ethics can be ousted due to bad behavior. Furthermore, the Atlanta Code prohibits members from making campaign contributions to candidates in city elections and engaging in city election political activities during their terms as board members. The City of Atlanta is also unique in that they have created the position of an Ethics Officer.[222] The Ethics Officer works with the Board of Ethics to enforce the City of Atlanta's ethics code. Unlike the members of the ethics board, the Atlanta Ethics Officer occupies a full-time, salaried position.

While it may seem that the most obvious power to put in the hands of the ethics board would be that of removal from office, Georgia law is unclear on whether or not a city council would have the legal authority to take such actions upon the recommendation of the board. If this power is not established in the charter, it cannot be created in a city ordinance.[223] Such a change to the city's charter requires a Local Act of the General Assembly. Thus, providing removal power or other similar sanctions might render the ethics ordinance establishing the board invalid. An alternative is to empower the board of ethics to write advisory opinions and to recommend sanctions such as public reprimand or censure to the governing authority of the municipality if the board determines that a violation has occurred. Furthermore, an ethics ordinance should work in conjunction with any pre-existing remedies at law should such a violation arise. City councils, for example, are often empowered to hold inquiries and investigations into city affairs and the conduct of all agencies, officers, and departments.[224]

Another power that several cities have attempted to give their ethics boards is the power to fine offending officers. Although this punishment might seem obvious and even fitting given that the ethics board polices conflicts of interest and misappropriation, such sanctions may be beyond the legal authority of the board. The more prudent position may be to provide for public reprimand but stop short of allowing for fines; that said, this issue is unresolved, and Certified Cities of Ethics fall on both sides of the line. The GMA Ethics Certification Committee continues to have concerns about the legal enforceability of monetary fines for violation of an

[220] City of Atlanta Code § 2-804.
[221] Id.
[222] City of Atlanta Code § 2-805.
[223] O.C.G.A. § 36-35-6.
[224] City of Woodstock Code § 2.14.

ethics ordinance; those cities that choose to empower their boards in this manner may encounter problems in the future.

Other Common Features

Other common features of ethics codes include the following: statements that actions taken by public officials prior to passage of the code shall not be affected by the code's enactment; a severability clause stating that if any provisions shall be held invalid or unlawful in a court of law, the decision of the court shall not effect the legitimacy of the remaining portions; and a repealer clause which does away with conflicting ordinances on the matter. These features help to ensure that the ethics code meets legal requirements, so that the code can function to achieve its worthy objectives of protecting the public against unethical behavior by its elected officials.

The importance of the principles contained in a code of ethics cannot be over-emphasized, and the adoption of such legislation provides concrete proof to a community that their elected officials are interested in honest government. Both the public and its elected officials stand to gain from this endeavor.

Things to keep in mind while drafting an ethics ordinance:[225]

- The city charter – does it allow for adoption of an ethics ordinance? Is the ordinance consistent with provisions in the charter on removal from office and other such issues?
- Due process – officials charged with violations have a right to notice of the charges, representation by legal counsel, and an adequate opportunity to respond to the charges – does the ordinance provide for these things procedurally?
- Penalties – are monetary fines used as penalties in your ordinance? The GMA Ethics Certification Committee continues to have concerns about the legal enforceability of monetary fines for violation of an ethics ordinance.
- Free Speech – are you going too far in an attempt to avoid even an appearance of impropriety and consequently quashing the free speech rights of city officials?
- Conflicts of interest – are you making exceptions for things that are not actually legal? A contract can be invalidated on the ground that it violates good public policy and the constitutional principles of public trusteeship even if it is technically "ethical" in the eyes of the municipality.
- Incompatible offices – are you drafting this section too narrowly? Although it's important to avoid conflicts of interest and making sure that no one holds incompatible offices is an important part of that, in areas with smaller populations there may only be so many individuals both qualified and willing to run for office and serve their community. For that reason some ethics ordinances exclude licensed professionals from the application of this provision in order to allow qualified persons to hold office.

[225] Carothers, Richard. Establishing, Following Ethics Rules Raises the Level of Trust. See Appendix C.

Use and Implementation of the Sample Ethics Ordinance

The 2008 GMA Ethics Task Force put together a sample ethics ordinance incorporating elements of several successful ethics ordinances. The provisions in the GMA sample ordinance meet the ordinance requirements to be a "Certified City of Ethics." This ordinance is designed as a framework, and cities must make a few important decisions before adopting the ordinance because several provisions in the sample ordinance provide for a few alternatives. City officials and attorneys should evaluate the choices and see which option best fits the specific circumstances of the city. Any city should feel free to modify the ordinance or write its own ordinance from scratch, so long as it satisfies the "Certified City of Ethics" program requirements. Regardless of whether the city is adopting the ordinance in whole, in part, or not at all, the city officials need to consult with their city attorney to ensure that the ordinance will be legal and effective. As always, the GMA sample ordinance is provided purely for informational purposes and should not be treated as legal advice.

The model ordinance contains provisions that allow the city to choose between several options. The city first should choose a board of ethics structure that suits the needs of the city. Alternatives A, B, and C create an ethics board, while Alternative D places ethics proceedings under the control of the municipal court. Alternatives A and B are fairly simple and similar. The only difference is that Alternative B requires one board member to be an attorney in good standing. Alternative C randomly draws board members from a pool of willing citizens. Under Alternative C, the ethics board will change for every complaint. This approach will involve more citizens and involve them for less time.

If the city adopts Alternative A, B, or C, it should also adopt subsections (b) – (j) relating to the operation of the board. If the city adopts Alternative D, it should not adopt these sections, as it will not have a board of ethics. The city should set whatever terms of office it desires for board members in subsection (c). Cities that choose to establish a board of ethics will also need to choose between two possible subsection (j)'s. One allows board members to be removed by vote; the other only allows removal for cause. The city may pick whichever option it feels best serves the city.

The city should adopt the Receipt of Complaint section that corresponds to the alternative selected above. The city must choose the corresponding alternative because they are tailored for the specific board composition. Once again, cities that adopt Alternative A, B, or C, but not Alternative D, should also adopt subsections (b) – (g).

The last choice presented in the model ordinance relates to ethics complaints during election season. In order to prevent politically motivated ethics complaints, the city can choose Alternative A, which states that the city will not accept or process ethics complaints against persons seeking election, Alternative B, which states that the city will accept, but not process, complaints against persons seeking election, or neither. As with all provisions, the city can also draft its own section, so long as it conforms to the Cities of Ethics requirements.

Cities should not feel bound by any provision of the model ordinance. The model ordinance was created to provide a starting point for an ethics ordinance and to get cities thinking

about formal ethics procedures, not to provide a “one size fits all” uniform ordinance. City governments should ensure that the city attorney is involved in the process, and that the final ordinance contains definitions, prohibitions, due process, and penalties.

Closing Thoughts

Our hope is that this publication has demonstrated the potential benefits and pitfalls of establishing a comprehensive, tailored code of ethics and shed additional light on matters to consider in that process. Establishing a code that deals with ethics violations up front provides notice to officials as to what kinds of behavior will be allowed within the municipality.

The duties of city officials may seem complex at first glance, but in reality they boil down to a single idea – fair representation of the public interest. The goal of all ethics codes is to insure that the public is fairly represented by a person whom they have freely chosen to govern. This is both an honor and burden, as ethics codes tend to constrain the personal actions of elected officials in many ways. Optimally, ethics codes should be unique as the cities that enact them. A careful balance must be struck to encourage qualified individuals to serve in public office without generating conflicts of interest. The problem of finding qualified citizens to hold office is exacerbated when the city or town in question is of a particularly small size. However, a well-drafted code of ethics can allow for the optimal conflict-free action in the personal financial life of the official while protecting the city from potential misuse of office.

Additionally, the creation of a local ethics ordinance allows citizens to raise their concerns and participate in the ethics investigation process at the local level, where the voice and influence of the individual citizen is strongest. Preserving and encouraging local self-governance and accountability is critical to securing public participation in government and safeguarding our democratic institutions.

Appendix A:
GMA Sample Ethics Ordinance

This sample ethics ordinance is provided only for general informational purposes and to assist Georgia cities in identifying issues to address in a local ethics ordinance. The ordinance is not and should not be treated as legal advice. You should consult with your legal counsel before drafting or adopting any ordinance and before taking any action based on this sample.

SAMPLE ETHICS ORDINANCE

City of _____

State of Georgia

ORDINANCE No. _____

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF _____, GEORGIA TO PROVIDE A NEW CODE SECTION _____, ETHICS; TO PROVIDE FOR PENALTIES; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the duly elected governing authority of the City of _____, Georgia is authorized by O.C.G.A. § 36-35-3 to adopt ordinances relating to its property, affairs and local government; and

WHEREAS, the duly elected governing authority of the City of _____, Georgia is the Mayor and Council thereof; and

WHEREAS, the governing authority deems it essential to the proper operation of democratic government that the public officials be, and give the appearance of being, independent, impartial, and responsible to the people; that governmental decisions and policies be made in the proper channels of the governmental structure; and that public office not be used for personal gain; and

WHEREAS such measures are necessary to provide the public with confidence in the integrity of its government.

NOW THEREFORE it is the policy of the city that its officials, employees, appointees, and volunteers conducting official city business:

Serve others and not themselves;
Be independent, impartial and responsible;
Use resources with efficiency and economy;

Treat all people fairly;
Use the power of their position for the well being of their constituents; and
Create an environment of honesty, openness and integrity.

NOW THEREFORE BE IT AND IT IS HEREBY ORDAINED:

Section 1.

That the Code of Ordinances of the City of _____, Georgia is hereby amended by adding sections to be numbered _____, Code of Ethics, which said sections read as follows:

"Sec. _____ PURPOSE

The purpose of this code of ethics is to:

(a) Encourage high ethical standards in official conduct by city officials;
(b) Establish guidelines for ethical standards of conduct for all such officials by setting forth those acts or actions that are incompatible with the interest of the city;
(c) Require disclosure by such officials of private financial or other interest in matters affecting the city; and
(d) Serve as a basis for disciplining those who refuse to abide by its terms.

Sec. ___ SCOPE

The provisions of this code of ethics shall be applicable to all elected or appointed city officials.

Notwithstanding anything herein to the contrary, state law and the charter of the city shall be controlling in the event of an actual conflict with the provisions of this code of ethics. This ordinance shall be interpreted to supplement, and not replace, said provisions of state law and the charter.

Sec. _____ DEFINITIONS

Solely for the purpose of this code of ethics:

(a) *City official* or *official*, unless otherwise expressly defined does not include city employees but does mean the mayor, members of the city council, municipal court judges (including substitute judges), city manager, city clerk, city attorney, and all other persons holding positions designated by the city charter, as amended. The term "city official" also includes all individuals, including city employees, appointed by the mayor and/or city council as appropriate to city authorities, commissions, committees, boards, task forces, or other bodies which can or may vote or take formal action or make official recommendations to the mayor and/or city council.

(b) *Decision* means any ordinance, resolution, contract, franchise, formal action or other matter voted on by the city council or other city board or commission, as well as the discussions or deliberations of the council, board, or commission which can or may lead to a vote or formal action by that body.

(c) *Employee* means any person who is a full-time or part-time employee of the city.

(d) *Immediate family* means the spouse, mother, father, grandparent, brother, sister, son or daughter of any city official related by blood, adoption or marriage. The relationship by marriage shall include in-laws.

(e) *Incidental interest* means an interest in a person, entity or property which is not a substantial interest as defined herein and which has insignificant value.

(f) *Remote interest* means an interest of a person or entity, including a city official, which would be affected in the same way as the general public. For example, the interest of an official in the property tax rate, general city fees, city utility charges or a comprehensive zoning ordinance or similar matters is deemed remote to the extent that the official would be affected in common with the general public.

(g) *Substantial interest* means an interest, either directly or through a member of the immediate family, in another person or entity, where:

(1) the interest is ownership of five percent or more of the voting stock, shares or equity of the entity or ownership of $5,000.00 or more of the equity or market value of the entity; or

(2) the funds received by the person from the other person or entity during the previous 12 months either equal or exceed (a) $5,000.00 in salary, bonuses, commissions or professional fees, or $5,000.00 in payment for goods, products or services, or (b) ten percent of the recipient's gross income during that period, whichever is less;

(3) the person serves as a corporate officer or member of the board of directors or other governing board of a for-profit entity other than a corporate entity owned or created by the city council; or

(4) the person is a creditor, debtor, or guarantor of the other person or entity in an amount of $5,000.00 or more.

Sec. ___ PROHIBITIONS

(a) No city official shall use such position to secure special privileges or exemptions for himself or herself or others, or to secure confidential information for any purpose other than official duties on behalf of the city.

(b) No city official, in any matter before the council or other city body, relating to a person or entity in which the official has a substantial interest, shall fail to disclose for the record such interest prior to any discussion or vote or fail to recuse himself/herself from such discussion or vote as applicable.

(c) No city official shall act as an agent or attorney for another in any matter before the city council or other city body.

(d) No city official shall directly or indirectly receive, or agree to receive, any compensation, gift, reward, or gratuity in any matter or proceeding connected with, or related to, the duties of his office except as may be provided by law.

(e) No city official shall enter into any contract with, or have any interest in, either directly or indirectly, the city except as authorized by state law.

(i) This prohibition shall not be applicable to the professional activities of the city attorney in his or her work as an independent contractor and legal advisor on behalf of the city.

(ii) This prohibition shall not be applicable to an otherwise valid employment contract between the city and a city official who is not elected (such as, by way of example, a city manager, city administrator or chief of police).

(iii) Any official who has a proprietary interest in an agency doing business with the city shall make that interest known in writing to the city council and the city clerk.

(f) All public funds shall be used for the general welfare of the people and not for personal economic gain.

(g) Public property shall be disposed of in accordance with state law.

(h) No city official shall solicit or accept other employment to be performed, or compensation to be received, while still a city official if the employment or compensation could reasonably be expected to impair such official's judgment or performance of city duties.

(i) If a city official accepts or is soliciting a promise of future employment from any person or entity who has a substantial interest in a person, entity or property which would be affected by any decision upon which the official might reasonably be expected to act, investigate, advise, or make a recommendation, the official shall disclose the fact to the city council and shall recuse himself/herself and take no further action on matters regarding the potential future employer.

(j) No city official shall use city facilities, personnel, equipment or supplies for private purposes, except to the extent such are lawfully available to the public.

(k) No city official shall grant or make available to any person any consideration, treatment, advantage or favor beyond that which it is the general practice to grant or make available to the public at large.

(l) A city official shall not directly or indirectly make use of, or permit others to make use of, official information not made available to the general public for the purpose of furthering a private interest.

(m) A city official shall not use his or her position in any way to coerce, or give the appearance of coercing, another person to provide any financial benefit to such official or persons within the official's immediate family, or those with whom the official has business or financial ties amounting to a substantial interest.

(n) A city official shall not order any goods and services for the city without prior official authorization for such an expenditure. No city official shall attempt to obligate the city nor give the impression of obligating the city without proper prior authorization.

(o) No city official shall draw travel funds or per diem from the city for attendance at meetings, seminars, training or other educational events and fail to attend such events without promptly reimbursing the city therefore.

(p) No city official shall attempt to unduly influence the outcome of a case before the Municipal Court of the City of _____ nor shall any city official engage in ex parte communication with a municipal court judge of the City of _____ on any matter pending before the Municipal Court of the City of _____.

Sec. ___ CONFLICT OF INTEREST

(a) A city official may not participate in a vote or decision on a matter affecting an immediate family member or any person, entity, or property in which the official has a substantial interest.

(b) A city official who serves as a corporate officer or member of the board of directors of a nonprofit entity must disclose their interest in said entity to the mayor and council prior to participating in a vote or decision regarding funding of the entity by or through the city.

(c) Where the interest of a city official in the subject matter of a vote or decision is remote or incidental, the city official may participate in the vote or decision and need not disclose the interest.

Sec. ____ BOARD OF ETHICS

Select Alternative A, B, C or D or draft another suitable alternative. If Alternative D is chosen, subsections (b) through (f) may be omitted. Alternative D can also be used in conjunction with one of the other alternatives to hear complaints against any member of the Board of Ethics or when the Board of Ethics cannot convene because appointed members of the Board of Ethics have conflicts of interest in hearing the matter.

Alternative A

(a) The Board of Ethics of the City shall consist of three (3) residents of the City, one appointed by the mayor, one appointed by the city council, and the third appointed by the mayor and approved by a majority of the city council.

Alternative B

(a) The Board of Ethics shall consist of three (3) residents of the City, one appointed by the mayor, one appointed by the council, and the third appointed by the two named Board members and approved by a majority of the city council. The third member of the Board of Ethics shall be a member in good standing of the State Bar of Georgia.

Alternative C

(a) The Board of Ethics of the City shall be composed of three (3) residents of the City to be appointed as follows: the mayor and councilmembers shall each designate one (1) qualified citizen to provide a pool of ___ number of individuals who have consented to serve as a member of such Board of Ethics and who will be available for a period of two (2) years to be called upon to serve in the event a Board of Ethics is appointed. The City Clerk shall maintain a listing of these qualified citizens. Upon receipt of a properly verified complaint and timely forwarding of that complaint to the city official charged in the complaint, the Mayor and Council, at the next regularly scheduled public meeting or at a specially called public meeting, shall draw names randomly from the listing of qualified citizens until three (3) members of the Board of Ethics have been appointed. Such Board will elect one of its members to serve as chair.

Alternative D

(a) The Municipal Court of the City of _____ shall hear and render decisions on all proper verified complaints filed under this ordinance.

(b) All members of the Board of Ethics shall be residents of the city for at least one (1) year immediately preceding the date of taking office and shall remain a resident while serving on the Board.

(c) All members of the Board of Ethics shall serve a ___-year term.

(d) No person shall serve as a member of the Board of Ethics if the person has, or has had within the preceding one (1) year period, any interest in any contract or contracting opportunity with the city or has been employed by the City.

(e) Members of the Board of Ethics with any permit or rezoning application pending before the city, or any pending or potential litigation against the city or any city official charged in the complaint shall be disqualified from serving on the Board

of Ethics for that complaint. An alternate member of the Board of Ethics shall be selected in the same manner as the disqualified individual.

(f) The members of the Board of Ethics shall serve without compensation. The city council shall provide meeting space for the Board of Ethics and, subject to budgetary procedures and requirements of the City, such supplies and equipment as may be reasonably necessary for the Board to perform its duties and responsibilities.

(g) No person shall serve on the Board of Ethics who has been convicted of a felony involving moral turpitude in this state or any other state, unless such person's civil rights have been restored and at least ten years have elapsed from the date of the completion of the sentence without a subsequent conviction of another felony involving moral turpitude.

(h) No person shall serve on the Board of Ethics who is less than 21 years of age, who holds a public elective office, who is physically or mentally unable to discharge the duties of a member of the Board of Ethics, or who is not qualified to be a registered voter in the City of _____.

(i) Upon appointment, members of the Board of Ethics shall sign an affidavit attesting to their qualification to serve as a member of the Board of Ethics.

(j) Members of the Board of Ethics may be removed by majority vote of the city governing authority.

OR

(j) Members of the Board of Ethics may be removed by majority vote of the city governing authority for cause including, but not limited to, failure to maintain any requirement for qualification to serve on the Board of Ethics.

Sec. ___ RECEIPT OF COMPLAINTS

Select Alternative A, B, C or D or draft another suitable alternative. If Alternative D is chosen, conform the language in the following sections by substituting "municipal court" for "board."

Alternatives A & B

(a) All complaints against city officials shall be filed with the Board of Ethics, who may require that oral complaints, and complaints illegibly or informally drawn, be reduced to a memorandum of complaint in such form as may be prescribed by the city council or the Board of Ethics. Upon receipt of a complaint in proper form, the chair of the Board of Ethics shall forward a copy of the complaint to the city official or officials charged in the complaint within no more than seven (7) calendar days.

Alternative C

(a) All complaints against city officials shall be filed with the city clerk, who will give it to the Mayor and Council. The Mayor and Council may require that oral complaints, and complaints illegibly or informally drawn, be reduced to a memorandum of complaint in such form as may be prescribed by the city council. Upon receipt of a complaint in proper form, the city clerk or the clerk's designee shall forward a copy of the complaint to the city official or officials charged in the complaint within no more than seven (7) calendar days.

Alternative D

(a) All complaints against city officials shall be filed with the clerk of the Municipal Court of the City of _____. Upon receipt of a complaint in proper form, the municipal court clerk shall forward a copy of the complaint to the city official or officials charged in the complaint within no more than seven (7) calendar days.

(b) All complaints shall be submitted and signed under oath, shall be legibly drawn and shall clearly address matters within the scope of this ordinance.

(c) Upon receipt of a complaint in proper form, the Board shall review it to determine whether the complaint is unjustified, frivolous, patently unfounded or fails to state facts sufficient to invoke the disciplinary jurisdiction of the City Council. The Board of Ethics is empowered to dismiss in writing complaints that it determines are unjustified, frivolous, patently unfounded or fail to state facts sufficient to invoke the disciplinary jurisdiction of the City Council; provided, however, that a rejection of such complaint by the Board of Ethics shall not deprive the complaining party of any action such party might otherwise have at law or in equity against the city official. For complaints that are not dismissed, the Board of Ethics is empowered to collect evidence and information concerning any complaint and add the findings and results of its investigations to the file containing such complaint.

(d) Upon completion of its investigation of a complaint, the Board of Ethics is empowered to dismiss in writing those complaints which it determines are unjustified, frivolous, patently unfounded or which fail to state facts sufficient to invoke the disciplinary jurisdiction of the City Council; provided, however, that a rejection of such complaint by the Board of Ethics shall not deprive the complaining party of any action such party might otherwise have at law or in equity against the city official.

(e) The Board of Ethics is empowered to conduct investigations, to take evidence, and to hold hearings to address the subject matter of a complaint.

(f) The Board of Ethics is empowered to adopt forms for formal complaints, notices, and any other necessary or desirable documents within its jurisdiction where the city council has not prescribed such forms.

(g) Findings of the Board of Ethics shall be submitted to the City Council for action.

Some elected officials raised concerns about potential misuse of the ethics complaint process for political purposes. The governing authority may elect to remain silent on this issue and allow local ethics complaints to be filed and processed at any time or the governing authority may consider Alternative A or B below or draft another suitable alternative.

Alternative A

(h) To discourage the filing of ethics complaints solely for political purposes, complaints will not be accepted against a person seeking election as a city official, whether currently serving as a city official or not, from the date qualifying opens for the elected office at issue through the date the election results for that office are certified. The time for filing complaints will not run during this period. Properly filed complaints will be accepted and processed after the election results have been certified.

Alternative B

(h) To discourage the filing of ethics complaints solely for political purposes, ethics complaints against a person seeking election as a city official, whether currently serving as a city official or not, which are filed between the date of qualifying for municipal office and the date of certification of the election results will be held and will not be processed until the election results for that office have been certified.

Sec. ___ SERVICE OF COMPLAINT

The city clerk or Board of Ethics as appointed herein set forth shall cause the complaint to be served on the city official charged as soon as practicable but in no event later than seven (7) calendar days after receipt of a proper, verified complaint. Service may be by personal service, by certified mail, return receipt requested or by statutory overnight delivery. A hearing shall be held within sixty (60) calendar days after filing of the complaint. The Board of Ethics shall conduct hearings in accordance with the procedures and regulations it establishes but, in all circumstances, at least one hearing shall include the taking of testimony and the cross-examination of available witnesses. The decision of the Board of Ethics shall be rendered to Mayor and Council within seven (7) calendar days after completion of the final hearing. At any hearing held by the Board of Ethics, the city official who is the subject of inquiry shall have the right to written notice of the hearing and the allegations at least seven (7) calendar days before the first hearing, to be represented by counsel, to hear and examine the evidence and witnesses and, to oppose or try to mitigate the allegations. The city official subject to the inquiry shall have also have the right but not the obligation of submitting evidence and calling witnesses. Failure to comply with any of time deadlines in this section of the ordinance shall not invalidate any otherwise valid complaint or in any way affect the power or jurisdiction of the Board of Ethics or the city council to act upon any complaint.

Sec. ___ RIGHT TO APPEAL

(a) Any city official or complainant adversely affected by the findings or recommendations of the Board of Ethics may obtain judicial review of such decision as provided in this Section.

(b) An action for judicial review may be commenced by filing an application for a writ of certiorari in the Superior Court of X County within thirty (30) days after the decision of the Board of Ethics. The filing of such application shall act as supersedeas.

Sec. ___ PENALTY

Any person violating any provision of this article is subject to:

(a) Public reprimand or censure by the city council; or
(b) Request for resignation by the city council."

Section 2.

The sections, subsections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any section, subsection, paragraph, sentence, clause or phrase shall be declared illegal by the valid judgment or decree of any court of competent jurisdiction, such illegality shall not affect any of the remaining section, subsections, paragraphs, sentences, clauses and phrases of this ordinance.

Section 3.

All ordinances and parts of ordinances in conflict herewith are expressly repealed.

Section 4.

The adoption date of this ordinance is _____ and the effective date of this ordinance shall be _____.

ORDAINED this ____ day of _____, _____.

City of _____

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney.

Appendix B:
Letter from the Attorney General

March 31, 1997

Honorable Robert S. Reeves
Chairman, Board of Commissioners
Emanuel County
P.O. Box 787
Swainsboro, GA 30401

RE: Inquiry regarding Conflict of Interest.

Dear Mr. Reeves:

This letter is in response to your inquiry of December 18, 1996, in which you asked about potential conflicts of interest involving a member of the Emanuel County Board of Commissioners. Your county attorney has already advised you that under the facts you have provided me there is a conflict of interest in the situation described.

Your outline of the relevant facts shows that one of the Emanuel County commissioners is a minority stock holder, a member of the board of directors, and also the attorney for a bank with which the county does business. The commissioner's law partner is a member of the advisory board of and the attorney for another bank with which the county does business. The business the county conducts with these banks includes depositing general operating funds in four different banks in the county on a rotating basis and depositing surplus funds in the bank with the highest rate of return. You informed me that both of the relevant banks currently have significant amounts of county funds on deposit.

In light of your attorney's advice that there is a conflict of interest in these situations, you have asked me to answer the following questions:

> Can Emanuel County continue to deposit operational funds in the two relevant banks on a rotational basis?
>
> Can Emanuel County continue to deposit surplus funds in the two relevant banks, either the commissioner in question not participating in the discussion or the vote?

The answer to these questions under the current circumstances is no.

My analysis begins with the proposition that "[p]ublic officers are the trustees and servants of the people and are at all times amenable to them." Ga. Const. 1983, Art. I, Sec. II., Para. I. More specifically, "county commissioners [are] the trustees of the citizens of the counties they serve[] and as such [are] required 'to exercise the utmost good faith, fidelity and integrity' in their positions of trust." Op. Att'y Gen. 82-82, p. 165 (quoting Malcolm v. Webb, 211 Ga. 449 (1955)). "The trustee's duty of loyalty requires that he administer his trust solely for his beneficiary with undivided loyalty." Id. (citing Fulton National Bank v. Tate, 363 F.2d 562 (5th

Cir. 1966)). This means that a member of the county commission serves in a fiduciary capacity and owes a duty of undivided loyalty to the county.

I have previously opined that:

> A public trustee may not place himself in a position in which his interest or the interest of private parties he represents may conflict with the public interest and he has the opportunity and temptation to sacrifice the public interests to his interests or those of third parties. This rule is not limited to instances where a public official's interest is directly involved in the transaction. It also applies when a public official has a financial interest in, or fiduciary to, a private entity involved in a transaction with the state.

Id. at p. 171. The question in these circumstances then becomes whether a county commissioner is in a position where he has actually or potentially divided loyalties and responsibilities which create an unacceptable conflict of interest which cannot be cured even by recusal of the commissioner.

The Georgia Supreme Court confronted a somewhat similar situation in Montgomery v. City of Atlanta, 162 Ga. 534 (1926), where a city councilman was a large stockholder in a corporation which sought to contract with the city. The Court held that the corporation could not contract with the city even if the councilman did not vote on the contract or attempt to influence other votes, the contract was fair, and the rest of the city council ratified the contract. Id.

Although I realize the commissioner in Emanuel County holds only a small amount of stock, his interests are otherwise extensively tied to the bank's because he sits on the board of directors and is the bank's lawyer. As a result, the logic of the Montgomery decision would seem to apply to the current situation. In addition, I have previously opined that "[i]t is clear that a corporation, which has as one of its directors . . . the member of a State Board, could not contract with the state agency governed by the board." Op. Att'y Gen. 82-82, p. 174 (citing People v. Board of Supervisors of Schenectady County, 151 N.Y.S. 1012 (1915)). This logic would also seem to apply to the current situation.

More recently, the Georgia Supreme Court dealt with the issue of public officials' conflicts of interest in Richmond County Hospital Authority v. Richmond County, 255 Ga. 183 (1985). There, the Court held, in part, that an impermissible conflict of interest exists where a member of a state board who also serves on the board of a corporation with whom the state board does business "is permitted to obtain any financial benefit, either directly through compensation or indirectly through dealing with the corporations." Id. at 189 (citing City of Macon v. Huff, 60 Ga. 221 (1878)).[226] See also Op. Att'y Gen. U95-11.

[226] Although the Court found no conflict of interest under the facts of Richmond County Hosp. Auth., the facts of that case are distinguishable from the instant situation in that the members of the hospital authority who also served as members of the board of the corporations with whom the authority did business, did so only for the purpose of "ensur[ing] that the hospital [was] operated in accordance with the lease [between the authority and the corporation] and to ensure benefit to the public." Id. at 189.

Although the Emanuel County commissioner in question might not receive any direct financial benefit from the county's dealings with the bank, he surely would receive indirect benefits from bank deposits in his roles as director and attorney and, to a lesser extent, as minority shareholder. Additionally, the commissioner has a fiduciary duty to the bank because of his service as a director. See e.g., Cheney v. Moore, 193 Ga. App.312, 313 (1989).

Given the dual fiduciary duties that the commissioner has to both the county and the bank and the potential for conflicts in the interests of these entities, I must agree with your attorney's opinion that this creates a conflict of interest. Because the conflict is inherent in the dual loyalties and responsibilities, and in light of the law cited above, I do not believe the conflict can be resolved by recusal.

The same would seem to be true in regard to deposits in the bank whose local counsel and advisory board members is the commissioner's law partner. "If [a] lawyer is required to decline employment, no partners or associates of his firm may accept such employment, because a lawyer may legitimately disclose and discuss the affairs of a client with his partners or associates of his firm, unless the client otherwise directs, and a lawyer is required to avoid even the appearance of impropriety." Dick v. Williams, 215 Ga. App.629, 631 (1994) (quoting Summerlin v. Johnson, 176 Ga. App.336 (1985)). See also Directory Rule 5-105(D), Ga. Code of Professional Responsibility; Billings v. State, 212 Ga. App.125, 129 (1994). Therefore, because the commissioner cannot accept employment with the bank while in office, his law partner also cannot.

Based on the facts as you have presented them, and without knowledge of any particular local ordinances or policies on this point, I agree with the county attorney that a conflict of interest exists where a county deposits funds in a bank whose attorney, board of directors member, and minority shareholder is a county commissioner and in a bank where the county commissioner's law partner is a member of the advisory board and local counsel.

Sincerely,

MICHAEL J. BOWERS
Attorney General

Appendix C:
Article by Richard A. Carothers

Establishing, Following Ethics Rules Raises the Level of Trust
Richard Carothers, GMA City Attorneys Section President (2003-2004)
Posted March 2, 2004

"All government, of right, originates with the people, is founded upon their will only, and is instituted solely for the good of the whole. Public officers are trustees and servants of the people and are at all times amenable to them."

These words in Article 1, Section 2, Paragraph 1 of the Georgia Constitution set the tone for ethical conduct for public officials at the state and local level. They remind public officers that they are held to a higher level of conduct and accountability. Mere honesty is not enough. Public officials as trustees must act solely in the interest of the beneficiaries of that trust. The beneficiaries are the voters, taxpayers and public at large. It is their welfare that must be promoted by the actions of the public official. Also, as servants of the people, public officials are reminded that they have a duty to meet the needs of the people. However, this duty is met not merely by blowing with the political winds or following the whims of the people; it is carried out by responsible and educated leadership.

GMA appointed an Ethics Task Force in 1998 to address concerns after a study showed a trend toward less confidence in public officials. While GMA believes that the overwhelming majority of municipal elected officials are honest and ethical, it was determined necessary to address the public's perception. The Ethics Task Force was comprised of municipal elected officials, community and industry leaders and academics. The result of their work was the publication of a "Model Code of Ethics for Georgia City Officials" in September 1999 and the implementation of GMA's Certified City of Ethics program.

The GMA Certified City of Ethics program requires that cities adopt a resolution acknowledging and subscribing to five ethics principles as well as an ordinance to govern the conduct of elected officials. The five ethics principles included in the resolution are as follows:

- Serve Others, Not Ourselves
- Use Resources with Efficiency and Economy
- Treat All People Fairly
- Use the Power of Our Position for the Well Being of Our Constituents
- Create an Environment of Honesty, Openness and Integrity

The ethics ordinance adopted by the city must contain, at a minimum, definitions, an enumeration of permissible and impermissible activities by elected officials, due process procedures for elected officials charged with a violation of the ethics ordinance and punishment provisions for those officials who violate the ethics ordinance.

The resolution and ordinance are then reviewed by the GMA Ethics Certification Committee,

which determines if the ethics materials submitted by the city meet the standards for certification as a City of Ethics. Through review of city ethics ordinances the GMA Ethics Certification Committee has become aware of common shortcomings in local ordinances.

Don't Conflict with the Charter
First, the governing authority needs to ensure that their city charter allows adoption of an ethics ordinance and does not conflict with or preempt it. Because the charter takes precedence over any ordinance, it is important that the charter and ethics ordinance work together, not at cross-purposes. For instance, the charter may contain provisions on removal from office and the standards for removal that are inconsistent with the ethics ordinance. One simple way to clarify any uncertainty your city may have about the authority to have an ethics ordinance is to amend the city's charter under your Home Rule powers found at O.C.G.A. Section 36-35-3 to specifically authorize your ethics ordinance. This is a process that needs to be guided by the city attorney.

Due Process
Second, the ethics ordinance should contain a provision that specifies the procedure that should be followed in filing a complaint, specifies how a Board of Ethics is selected and conducts its affairs and acknowledges the right of an official charged with a violation to notice of the charges, representation by legal counsel and an adequate opportunity to respond to the charges. You may want to look at the procedures in the Marietta or Roswell ordinances in the GMA publication, "Model Code of Ethics for Georgia City Officials."

Penalties
Third, many local ethics ordinances contain monetary fines in addition to sanctions such as public censure or reprimand and a request to resign from office. The members of the GMA Ethics Certification Committee continue to have concerns about the legal enforceability of monetary fines for violation of an ethics ordinance. Again, this is a matter to be discussed with the city attorney.

Free Speech
Fourth, although it is laudable to make every effort to avoid even an appearance of impropriety, some ethics ordinances may go too far in restricting the ability of elected officials to also act as individuals within the community affected by the actions of the city. While an elected official may have a conflict of interest and be ineligible to vote on a matter in which they are financially interested, attempting to prevent council members from speaking to other members of the city council as a city resident rather than an elected official may in certain contexts unduly infringe on that person's right to free speech and right to petition their government for redress of grievances. Additionally, some local ethics ordinances attempt to regulate the conduct of candidates for office or those elected who have not yet taken office. It is not clear that local ordinances can regulate this conduct. Again, the city attorney should be consulted for guidance in these areas.

Conflicts of Interest
Fifth, it is important to remember that just because an activity is free from criminal sanction or does not violate the city's ethics ordinance does not necessarily mean that it is ethical or legal. This concern particularly arises where ethics ordinances attempt to define the nature and limits of

a "personal interest" prohibiting an elected official from voting on that matter. Although such definitions can be useful, a contract may be invalidated on the ground that it violates good public policy and the constitutional principles of public trusteeship. The courts may view a transaction as a common law conflict of interest even though no statute or ordinance was violated.

A number of ethics ordinances also contain a provision prohibiting local officials from engaging in any employment or rendering of service that is adverse to and incompatible with the proper discharge of official duties. Some of these ordinances exclude licensed professionals from the application of this prohibition. City officials should never engage in an activity which is incompatible with the proper discharge of official duties. These are also areas to be reviewed with the city attorney.

GMA has supported and promoted the use of a local ethics ordinance as they allow citizens to raise their concerns and participate in the ethics investigation process at the local level, where the voice and influence of the individual citizen is strongest. Local ethics ordinances also provide an opportunity for local elected officials to win the trust of the people they serve by voluntarily holding themselves to high levels of ethical conduct.

In addition to the City of Ethics program, GMA also offers training on ethics through the Municipal Training Institute and at the Newly Elected Officials Institute. For more information on the Certified City of Ethics or the Certified Organization of Ethics program, contact Kelly Shields at GMA at 678-686-6204.

Appendix D:
Procedure for Becoming a
"Certified City of Ethics"

To earn a "Certified City of Ethics" designation, a city must take two actions.

Adopt a resolution establishing the five ethics principles for the conduct of your city's officials.

These principals are designed to guide the elected officials as individuals and as a governing body. These principals are:

- Serve others, not ourselves
  Use resources with efficiency and economy
- Treat all people fairly
- Use the power of our position for the well being of our constituents
- Create an environment of honesty, openness and integrity

The adopted resolution must include or at least reference the definitions of these principles. A sample resolution is available from GMA. A majority of the city's elected governing body must sign the resolution.

Adopt an ethics ordinance that meets minimum standards approved by the GMA Board.

The ordinance must contain definitions, an enumeration of permissible and impermissible activities by elected officials, due process procedures for elected officials charged with a violation of the ordinance and punishment provisions for those elected officials found in violation of the ordinance.

City officials should consult GMA's publication, "Ethics in Government: Charting the Right Course", when considering the process of developing and enacting a comprehensive codes of ethics and in facing ethical dilemmas on a day-to-day basis. "Establishing, Following Ethics Rules Raises the Level of Trust" by Richard Carothers is also an excellent resource to reference when drafting an ethics ordinance. GMA also makes available a sample ethics ordinance for cities to use as a starting point in drafting their own ordinance. Cities should consult with their city attorney on any proposed ethics ordinance well in advance of drafting and adoption.

Following their adoption, the resolution and ordinance should be mailed to:
Georgia Municipal Association
Attention: Legal Department
201 Pryor Street, SW
Atlanta, Georgia 30303
The resolution and ordinance will be forwarded to the GMA Ethics Certification Committee, which is comprised of the Executive Committee of the GMA City Attorneys Section, for their review. If this panel of attorneys determines that both items meet the established requirements, the city will be designated as a "Certified City of Ethics."

City of Ethics FAQ

How did the Cities of Ethics Program get its start?

GMA appointed an Ethics Task Force in 1998 to address concerns over a trend toward less confidence in public officials. The Ethics Task Force included municipal elected officials, community and industry leaders, and academics. The result of their work was the publication of a "Model Code of Ethics for Georgia City Officials" in September 1999 and the implementation of GMA's Certified Cities of Ethics program. In February 2005, GMA completed an updated handbook that was a compilation of the "Model Code of Ethics" and a prior GMA publication, "Ethics in Government: Finding the Right Course," which was written in 1993. This publication was titled, "Ethics in Government: Charting the Right Course."

In 2008 a new Ethics Task Force was appointed to evaluate the existing Certified Cities of Ethics program and make recommendations on ways to improve the program and ensure its effectiveness. In January 2009 the GMA Board adopted the recommendations of the Ethics Task Force and instituted a requirement of re-certification every four years and approved a new sample ordinance.

What is the purpose of the Cities of Ethics Program?

Certification under this program is a way to recognize cities that have adopted principles and procedures that offer guidance on ethical issues, along with a mechanism to resolve complaints at the local level. The program is not in any way an attempt to sanction past or present conduct by the city or any city official. Rather, it is an attempt to raise awareness about ethics issues at the local level and provide a local forum for the airing and resolution of legitimate concerns. The use of a local ethics ordinance allows citizens to raise their concerns and participate in the ethics investigation process at the local level, where the voice and influence of the individual citizen is strongest.

What is the process for becoming a City of Ethics?

Two steps are required prior to becoming a certified City of Ethics. First, the city and every member of its governing authority must adopt a resolution acknowledging and subscribing to five ethics principles to govern the conduct of elected officials. The ethics principals to be included in the resolution are:

- Serve others, not ourselves
- Use resources with efficiency and economy
- Treat all people fairly
- Use the power of our position for the well being of our constituents
- Create an environment of honesty, openness and integrity

The adopted resolution must include or at least reference the definitions of these principles. A sample resolution is available on the GMA website. A majority of the city’s elected governing body must sign the resolution.

Second, cities must also adopt an ethics ordinance that meets minimum standards approved by the GMA Board. The ordinance must contain definitions, an enumeration of permissible and

impermissible activities by elected officials, due process procedures for elected officials charged with a violation of the ordinance and punishment provisions for elected officials who have been found in violation of the ordinance.

Who decides whether a city has qualified to become a Certified City of Ethics?
GMA encourages all cities to apply for the City of Ethics program, but city officials should be aware that approval is not automatic. Ordinances and resolutions submitted by each city are reviewed by the GMA Ethics Certification Committee, which is comprised of the Executive Committee of the GMA City Attorneys' Section. This committee compares materials submitted by cities with the recommendations of the GMA Board. If this panel of attorneys determines that both the ordinance and resolution submitted by each city meet the established requirements, then the city's application for certification as a City of Ethics will be approved.

Once a city adopts an ethics ordinance and qualifies as a City of Ethics, does GMA enforce the ordinance?
No, GMA does not act as an enforcement or regulating agency. Ultimately, it is the local electorate that determines the acceptable level of ethical conduct by the character of those elected to and retained in office.

Is periodic recertification required to maintain the City of Ethics designation?
Beginning January 1, 2009 certification and re-certification will be good for four years. To remain a Certified City of Ethics, prior to the expiration of the four year period the organization must submit to GMA for review a resolution re-adopting the five ethics principles and acknowledging that the members of the organization's governing body have read and understand the organization's ethics requirements in statute and in by-laws.

Cities that have been certified for more than four years as of January 1, 2009 will be required to re-certify on schedule reflecting the order in which they were originally certified and thereafter they will be required to re-certify every four years.

GMA encourages each Certified City of Ethics to periodically train new and existing members of the city's governing body on the ethics principles and the ethics requirements imposed on the organization by federal, state and local law and ordinance.

What recognition do cities receive for achieving Cities of Ethics certification?
Each city designated as a Certified City of Ethics will receive a plaque and a logo which can be incorporated into city stationery, road signs and other materials at the city's discretion. In addition, GMA will send press releases to the local media notifying them that the city has earned this designation.

Which cities are already certified as Cities of Ethics?
There is a complete list of certified Cities of Ethics, Certified Counties of Ethics, and Certified Organizations of Ethics available on the GMA website.

Is there also a Counties of Ethics program in Georgia?
Yea. Counties in Georgia are eligible to apply for certification under GMA's program and, if certified, will be designated a "Certified County of Ethics."

What role does the Georgia Government Transparency and Campaign Finance Commission play in monitoring local government ethics violations?
The State Ethics Commission was created in 1987 and renamed the Georgia Government Transparency and Campaign Finance Commission in 2010. It is responsible for enforcing Georgia's Ethics in Government Act. The Commission is governed by five members and is responsible for investigating, reporting on, and prosecuting violations of the Ethics in Government Act, as well as for maintaining and publishing annual reports on lobbyist spending and campaign financing. All state and local officials are required to comply with the provisions in the Act, including filing annual campaign financing disclosure statements. More information on the requirements of the Act can be found in GMA's publication "Ethics in Government: Charting the Right Course" and on the website of the Commission.

Who can I contact at GMA for more information on this issue?
For more information about the City of Ethics program, contact Kelly Shields of the GMA staff at 678-686-6204. For information about the GMA training programs that focus on ethics, please contact Janice Eidson at 678-686-6256.

Appendix E:
Sample Resolution for Participation in the "Certified City Of Ethics" Program

WHEREAS the Board of Directors of the Georgia Municipal Association has established a Certified City of Ethics program; and,

WHEREAS the City of _____, wishes to be certified as a Certified City of Ethics under the GMA Program; and,

WHEREAS part of the certification process requires the Mayor and Council to subscribe to the ethics principles approved by the GMA Board;

NOW THEREFORE BE IT RESOLVED by the governing authority of the City of _____, Georgia, that as a group and as individuals, the governing authority subscribes to the following ethics principles and pledges to conduct its affairs accordingly:

* Serve Others, Not Ourselves
* Use Resources With Efficiency and Economy
* Treat All People Fairly
* Use The Power of Our Position For The Well Being Of Our Constituents
* Create An Environment Of Honesty, Openness And Integrity

RESOLVED this _____ day of _____, 20__.

_____
Mayor

_____
ATTEST

Appendix F:
Procedure for Becoming a
"Certified Organization of Ethics"

Who Can be a Certified Organization of Ethics

Participation in this program is limited to organizations who have as their mission enhancing the quality of life, the provision of public services or economic development within their community. An organization must also be:

- A public corporation or authority created under a general or local act of the Georgia General Assembly;
- An authority or instrumentality of a Georgia local government;
- Exempt from federal income taxation as a not for profit civic league or association under Section 501(c)(4) of the Internal Revenue Code and headquartered in Georgia; or
- Exempt from federal income taxation as a not for profit business league or chamber of commerce under Section 501(c)(6) of the Internal Revenue Code and headquartered in Georgia.

GMA reserves the right to accept or reject any organization for participation in this program for any reason.

How to Become a Certified Organization of Ethics

To earn a "Certified Organization of Ethics" designation, an organization must adopt a resolution containing two elements:

(1) Establishing the five ethics principles for the conduct of your organization's officials.
These principals are designed to guide the officials as individuals and as a governing body. These principals are:

- Serve others, not ourselves.
- Use resources with efficiency and economy.
- Treat all people fairly.
- Use the power of our position for the well being of our constituents and our community as a whole.

- Create an environment of honesty, openness and integrity.

The adopted resolution must include or at least reference the definitions of these principles. A sample resolution is available from GMA. A majority of the officials comprising the organization's governing body are required to sign the resolution.

(2) Amending the organization's by-laws to enact clear ethics provisions that meet minimum standards approved by the GMA Board. The resolution must contain definitions, an enumeration of permissible and impermissible activities by organization officials, due process procedures for officials charged with a violation of the ethics by-laws, punishment provisions for those officials found in violation of the ethics by-laws and enforcement provisions.

GMA recommends that organizations review the GMA sample ethics ordinance when drafting their by-law amendment. A copy of this ordinance is available on the GMA website. Another helpful resource is the model ethics ordinance crafted by the International Municipal Lawyers Association (IMLA). Copies of this ordinance may be obtained by contacting the GMA Legal Department at (404) 688-0472.

To the extent that state or federal law impose additional ethical duties on an organization or its officials, these additional duties must be disclosed to GMA and referenced or incorporated into the organization's by-laws.

Following adoption, the resolution establishing the ethics principles and amending the organization's by-laws should be mailed to:

Georgia Municipal Association
Attention: Legal Department
201 Pryor Street, SW
Atlanta, Georgia 30303

In addition to the resolution, the organization will be required to complete and submit a form explaining the organization's mission and governing structure and identifying a contact person with the organization.

The resolution and completed form will be forwarded to the Ethics Certification Committee, which is comprised of the Executive Committee of the GMA City Attorneys Section, for their review. If this panel of attorneys determines that the organization and resolution meet the established requirements, the organization will be designated as a "Certified Organization of Ethics."

Recognition for Certified Organizations of Ethics
Each organization designated as a Certified Organization of Ethics will receive a plaque and a logo which can be incorporated into organization stationery and other materials at the organization's discretion. In addition, GMA will send press releases to the local media notifying them that the organization has earned this designation.

Recertification
Beginning in January 1, 2009 certification and re-certification will be good for four years. To remain a Certified Organization of Ethics, prior to the expiration of the four year period the

organization must submit to GMA for review a resolution re-adopting the five ethics principles and acknowledging that the members of the organization's governing body have read and understand the organization's ethics requirements in statute and in by-laws.

Organizations that have been certified for more than four years as of January 1, 2009 will be required to re-certify on schedule reflecting the order in which they were originally certified and thereafter they will be required to re-certify every four years.

GMA encourages each Certified Organization of Ethics to periodically train new and existing members of the organization's governing body on the ethics principles and the ethics requirements imposed on the organization by law and through the organization's by-laws

Appendix G:
Procedure for Becoming a
"Certified County of Ethics"

To earn a "Certified County of Ethics" designation, a county must take two actions.

Adopt a resolution establishing the five ethics principles for the conduct of your county's officials.

These principles are designed to guide the elected officials as individuals and as a governing body. These principles are:

- Serve others, not ourselves
- Use resources with efficiency and economy
- Treat all people fairly
- Use the power of our position for the well being of our constituents
- Create an environment of honesty, openness and integrity

The adopted resolution must include or at least reference the definitions of these principles. A sample resolution is available from GMA. A majority of the county's elected governing body must sign the resolution.

Adopt an ethics ordinance that meets minimum standards approved by the GMA Board.

The ordinance must contain definitions, an enumeration of permissible and impermissible activities by elected officials, due process procedures for elected officials charged with a violation of the ordinance and punishment provisions for those elected officials found in violation of the ordinance.

County officials should consult GMA's Sample Ethics Ordinance (see link at right) when considering provisions to include in a comprehensive codes of ethics. This document is the most recent and most accurately reflects the types of provisions essential to a local ethics ordinance. County officials may also consider reviewing Paulding County's ethics ordinance. For general guidance in facing ethical dilemmas on a day-to-day basis and on state ethics laws, see GMA's publication "Ethics in Government: Charting the Right Course." Following their adoption, the resolution, ordinance and a $85 appliation fee should be mailed to:

Georgia Municipal Association
Attention: Legal Department
201 Pryor Street, SW
Atlanta, Georgia 30303

The resolution and ordinance will be forwarded to the GMA Ethics Certification Committee, which is comprised of the Executive Committee of the GMA City Attorneys Section, for their

review. If this panel of attorneys determines that both items meet the established requirements, the county will be designated as a "Certified County of Ethics."