

Land Use Law Center Elisabeth Haub School of Law

Local Government Ethics: Hypotheticals for Training Municipal Officials

Based on Davies & Leventhal, *Local Government Ethics: A Summary and Hypotheticals for Training Municipal Officials*,
NYSBA MUNICIPAL LAWYER, Vol. 28, No. 3 (Summer 2014)

FALL, 2020

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Prohibited Interests in Municipal Contracts (Gen. Mun. Law §§ 800-805)

Rule: A municipal officer or employee may not have an “interest” in a “contract” with the municipality if he or she has any control over the contract, unless an exception applies.

1. *Hypothetical*: When leaving a restaurant with her family one Saturday night, a village trustee is struck by a village sanitation truck. The trustee sues the village. Is the lawsuit a “contract with the municipality?”

2. *Hypothetical*: The village clerk requires an area variance to build a deck onto his home. In one instance, the Zoning Board of Appeals (“ZBA”) grants the variance. In another instance, the ZBA refuses to grant the variance, and the village clerk brings an Article 78 proceeding against the ZBA. Is the variance or the Article 78 proceeding a contract with the village?

3. *Hypothetical*: A town board member's thirty-five-year-old son owns a small construction company, which the town hires to repair the porch on town hall. The town board member has no financial interest in the firm and no financial relationship with his son. The town board member votes to award the contract to his son. Does the town board member have an "interest" in the contract?

4. *Hypothetical*: A village mayor hires her husband as her secretary in village hall. Is the mayor deemed to have an interest in the employment contract between the village and the mayor's husband?

5. *Hypothetical*: A town solicits sealed bids for a major renovation of town hall. The wife of one of the bidders sits on the town board, but she completely recuses (disqualifies) herself from having anything to do with the project. The husband's firm proves to be the lowest bidder. Is the town board member deemed to have an "interest" in that contract between her husband and the town? If so, is the contract prohibited since the bids were sealed and she recused herself?

6. *Hypothetical*: A town board member is a partner in a firm that owns the only dump in the area for bulk items. The town contracts with the firm to pick up and dispose of such items for town residents. The town board member recuses himself from having anything to do with the contract, either on behalf of the town or on behalf of the firm, and forgoes all profit from the contract, assigning it to his partner. Is the town board member deemed to have an interest in the contract?

7. *Hypothetical*: Same facts as in the preceding example, except the firm is a corporation in which the town board member is an investor only—that is, he has no managerial or other responsibility—owning five percent of the stock of the corporation. Is the contract is prohibited?

8. *Hypothetical*: A village trustee is a partner in an environmental engineering firm. The village planning board hires the firm to assist in reviewing a major proposed development. The village trustee recuses himself from any involvement in the matter, both on behalf of the village and on behalf of the firm, and assigns all profits from the matter to his partners. Does the village trustee have the requisite control over the contract since he recused himself? Is the contract prohibited?

9. *Hypothetical:* A common council member is counsel to a local law firm. As counsel, he does not participate in the profits of the firm but receives a percentage of the billings from his clients. The city contracts with the law firm to provide certain legal services to the city. The common council member is not involved in the matter at the firm and receives no compensation as a result of the firm's work on the matter. Is his interest in the firm's contract with the city prohibited? Would it make a difference if he were a partner in the firm?

10. *Hypothetical:* A city council member is the executive director of a non-profit social services agency, with which the city contracts. A portion of the city council member's salary as executive director will be paid by the city contract. Is his interest in that contract prohibited?

11. *Hypothetical*: The wife of an insurance agent who has an insurance contract with a town is elected to the town board. Is the town board member's interest in the town's insurance contract with her husband prohibited?

12. *Hypothetical:* A city IT director owns \$25,000 in Dell stock. He purchases for the city 100 Dell computers. Is his interest in the contract with Dell prohibited?

13. *Hypothetical:* A village trustee owns a stationary store from which the village makes occasional purchases, amounting to no more than \$500 in any one fiscal year. Is her interest in the village's contracts with the store prohibited?

Interests in Municipal Contracts: Disclosure (Gen. Mun. Law § 803)

Rule: An officer or employee who has an interest in a contract with the municipality, or whose spouse has such an interest, must disclose the interest in writing to his or her supervisor, and to the governing body, unless the contract is among the exceptions to Gen. Mun. Law § 801 listed in § 801.

14. *Hypothetical:* A village trustee is an associate at a law firm that contracts with the village to provide legal services. The trustee has nothing to do with the contract either on behalf of the village or the law firm, and her compensation from the law firm is not affected by the contract. Is the trustee's interest in the contract prohibited, and must she must publicly disclose that interest?

Interests in Applicants in Land Use Matters: Applicant Disclosure (Gen. Mun. Law § 809)

Rule: Applicants in land use matters must disclose any state or local official that has an interest in the applicant.

15. *Hypothetical*: The wife of a social worker with the county Department of Social Services is an office assistant with a construction firm, which applies to the planning board of a village within the county for site plan approval. Must the application for site plan approval disclose the name, residence, and county position of the social worker?

Confidential Information (Gen. Mun. Law § 805-a(1)(b))

Rule: A municipal officer or employee may not disclose confidential information acquired by him in the course of his official duties nor use such information to further his or her personal interests.

Compensation for Matters before an Official's Own Agency (Gen. Mun. Law § 805-a(1)(c))

Rule: A municipal officer or employee may not receive, or impliedly or expressly agree to receive, compensation for services rendered in relation to any matter before the official's own agency or an agency over which the official has jurisdiction or the power to appoint any official.

Contingency Fee Agreements (Gen. Mun Law § 805-a(1)(d))

Rule: A municipal officer or employee may not receive, or enter into an agreement to receive, compensation for services to be rendered in connection with a matter pending before any agency of the municipality, where the compensation is dependent upon the agency's action in the matter. This rule does not prohibit the fixing at any time of fees based on the actual value of the services rendered.

Prohibited Conduct: Gifts (Gen. Mun. Law § 805-a(1)(a))

Rule: Except for compensation allowed for performing a marriage ceremony, a municipal officer or employee may not request nor accept a gift in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, where BOTH of the following conditions are present:

Value of Gift:

The gift is worth seventy-five dollars or more (or, by implication, where multiple gifts are worth seventy-five dollars or more in the aggregate), and

Circumstances of Gift:

It “might reasonably be inferred” that the gift was intended to influence an official action;

The gift could “reasonably be expected” to influence his or her official action; or

The gift was intended as a reward for an official action.

16. *Hypothetical:* A town board member and a local developer are long time personal friends. They and their spouses traditionally celebrate their birthdays together at an expensive local restaurant. The cost of dinner always exceeds the sum of seventy-five dollars per person. Each friend picks up the tab on the birthday of the other. Shortly after the board member's fiftieth birthday, the developer applies to the town board for approval of a major development project. Is the cost of the birthday celebration a prohibited gift to the town board member?

17. *Hypothetical*: The president of a county funded not-for-profit organization invites the County Executive to attend its annual dinner dance. Tickets to the event are sold at a price that exceeds seventy-five dollars each. The County Executive attends, and presents the president with a citation recognizing the organization's charitable work. Is County Executive's attendance at the dinner a prohibited gift? May the County Executive send a representative to attend in her place.

18. *Hypothetical*: In the previous example, the president of the county-funded not-for-profit organization invites the County Executive to bring her spouse to the dinner dance, also as a guest of the organization. May the County Executive accept the invitation to bring her spouse to the dinner dance as a guest of the organization?

19. *Hypothetical:* A village vendor makes the maximum contribution allowed by the Election Law to the campaign of the incumbent mayor. The amount of the contribution exceeds the sum of seventy-five dollars. Are the campaign contributions prohibited gifts under Article 18?

20. *Hypothetical:* A worker employed in the county parks department coordinates a film director's use of the facility for the filming of a movie scene. Several days later, four cases of wine are delivered to the worker's office together with a thank you note from the director. Each bottle of wine has a retail value of less than seventy-five dollars. May the wine be accepted and shared with co-workers?

Bribery and Related Offenses (Penal Law Art. 200)

21. *Hypothetical*: After two police officers complete an investigation, clearing the president of a trucking company of any wrongdoing in connection with a motor vehicle accident, the trucking company president gives them ten dollars, saying "here, you fellows, buy some coffee for all the homework you have done." Was the gift illegal?

Common Law Conflicts of Interest

22. *Hypothetical*: On the eve of a change in its membership, the Town Board votes to approve a major development project. The decisive vote is cast by a trustee who is vice president of a public relations firm under contract to the developer's parent company. Did the Board member's vote violate Article 18? If not, might the court nonetheless annul the Board's decision approving the development project?

23. *Hypothetical*: Three members of the Village Planning Board sign a petition in support of a developer's project and application for rezoning. The Planning Board's chair writes a letter to the Mayor in supporting the project and stating that she would like to see new housing available if she decides to sell her home and move into something that would not require maintenance. Did the Planning Board's vote to approve the site plan violate GML Art. 18?

24. *Hypothetical*: The Village Board of Trustees approves an amendment to the Zoning Code that would allow cluster zoning of properties owned by the board members. Most land in the Village is similarly affected, and the disqualification of the Board members would preclude all but a handful of property owners from voting in such matters. Were the board members precluded from voting on the zoning amendments?

25. *Hypothetical*: A subdivision developer hires a member of the Town Board to construct a road, and offers the road for dedication to the Town. A dispute arises and the board member is fired. The developer requests that the Town accept the road and release his bond. The Town Engineer recommends that the board wait until the project is completed. With the board member recusing himself, the Town Board denies the request. The developer sues, alleging that the board member influenced the board against him.

26. *Hypothetical*: The applicant is a long-term member of the Board and recused himself. The wife of one of the Board members teaches piano to the applicant's daughter and was given a Christmas gift for doing so. The applicant is active in local politics. One of the Board members purchased homeowners' and automobile insurance from the applicant. The mother-in-law of a Board member criticized opponents to the applicant's project.

27. *Hypothetical:* A board chairman is president of a company that sells products to a local construction firm owned by one of the applicant's principals. During the previous three years, the construction firm made purchases of \$400 to \$3,000 from the chairman's company. During the same period, the chairman's company had annual gross sales of \$2,000,000 to \$3,000,000. Was the chairman required to recuse himself?