



DUPAGE COUNTY ETHICS TRAINING

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ETHICS ORDINANCE OF 2012

What's Old? & What's New?

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Background

- ▣ In 2003, the Illinois General Assembly required local units of government to adopt ethics policies restricting political activity and banning the acceptance of certain gifts to public officials.
- ▣ DuPage County adopts the DuPage County Ethics Ordinance in 2004 addressing these two areas.
- ▣ Between 2004 and 2012 the County amends the ordinance four times.



Background

- ▣ Each subsequent amendment made the ordinance stronger...but harder to use.
- ▣ In mid-2012, the County Board amended the ordinance to facilitate its adoption by other governmental entities.
- ▣ In late 2012, the Ethics Commission Chairman, Investigator General, and the State's Attorney's Office prepared a new ordinance reorganizing and restating provisions of the old ordinance, removing obsolete provisions, and building in new due process protections.



The New Ordinance

- ▣ Ordinance was reorganized to follow a logical table of contents for ease of use.
- ▣ Similar provisions combined or grouped together into subparts.
- ▣ Existing definition sections consolidated and streamlined.
- ▣ Greater use of simplified language throughout document.



What's Changed?

- ▣ Streamlined process for adoption by other agencies.
- ▣ Ethics “Officer” is now Ethics “Adviser.”
- ▣ Human resource complaints no longer treated as ethics complaints.
- ▣ Changes to complaint and hearing procedures.



What Does the Ordinance Cover?

- ▣ Gift Ban
- ▣ Political Contributions
- ▣ Prohibited Political Activity
- ▣ Conflicts of Interest
- ▣ Disregard of the Ordinance and Retaliation



Gift Ban

- ❑ No person subject to the ordinance may accept or solicit a gift from a “prohibited source.”
- ❑ Prohibited sources generally are people and entities which do business with your unit of government.
- ❑ Prohibited gifts usually do not include gifts from friends and relatives, education or travel expenses related to a person’s official position or items with a value of less than \$25 in any year.
- ❑ Gifts do not include food or refreshments that do not exceed \$25/per day.



Political Contributions

- ▣ Officers subject to this ordinance may not accept cumulative campaign contributions in excess of \$1,000 per calendar year from most persons or entities doing business with their unit of government.
- ▣ Similarly, they may not accept contributions in excess of \$1,000 per calendar year from anyone seeking appointment to a board or commission.
- ▣ These limits are more restrictive than state law.



Prohibited Political Activity

- ❑ In general, officers and employees are prohibited from engaging in certain political activity during compensated time.
- ❑ Most prohibited political activity involves fundraising activities, meeting planning, or electioneering.
- ❑ No person may require or reward an employee's participation in political activity.
- ❑ No solicitation of campaign contributions on public property (state law).



Conflicts of Interest

- ▣ Officers and employees must avoid conflicts of interest.
 - Disclosure of financial interests
 - Future employment offers
 - Prior employment relationships
 - Use of “inside” information
- ▣ Inform Ethics Adviser of potential conflicts.



Other Unethical Behavior

- ▣ Interference with investigations
 - Failure to cooperate
 - Providing false information
- ▣ Retaliation against whistleblowers



Complaint Procedure

- ❑ Complaints must be in writing and directed to the Investigator General (IG).
- ❑ IG reviews complaints and determines if the person accused of a violation is subject to the ordinance and whether the act or acts complained of are covered by the ordinance.
- ❑ IG can assist a complainant with filing a complaint with proper agency.
- ❑ If IG can proceed with investigation, he must inform the complainant, the respondent, and the “ultimate jurisdictional authority” (UJA) of the respondent of the existence of the complaint.



Who is My “UJA?”

- ❑ If you are an employee, it's your department head.
- ❑ If you are a department head, it's your agency's chief of staff or highest ranking employee.
- ❑ If you are a chief of staff, it's the presiding officer of your agency's governing board or the elected official who employs you.
- ❑ If you are the presiding officer of or a member of a governing board, it's the other members of governing board collectively.



Complaint Procedure

- ❑ IG conducts preliminary investigation to determine whether reasonable cause exists to believe a violation occurred.
- ❑ IG may compel testimony under oath as he or she deems necessary.
- ❑ IG prepares a written summary report to the Ethics Commission Chairman, the respondent, the complainant, and the UJA indicating the results of his or her inquiry.



Complaint Procedure

- ▣ If IG believes reasonable cause exists that an ethics violation has occurred, he or she may petition the Commission for leave to file a formal complaint.
- ▣ The Commission may deny the petition and end the inquiry or authorize the petition and set a hearing within six weeks.



Hearing Procedure

- ▣ The Commission will conduct a hearing in accordance with its rules.
- ▣ Commission hearings are closed to the public, but the Commission must make an audio recording of the hearing or retain a court reporter.
- ▣ The IG prosecutes the complaint to the Commission and has the burden of proof by a preponderance of evidence (civil standard).



Commission Decision

- ▣ If the Commission grants the complaint (finds the respondent “guilty” of the ethics violation), it must issue findings of fact and make recommendations of discipline.
- ▣ The Commission’s decision must be reduced to writing and forwarded to the respondent, the complainant, the IG, and the UJA.
- ▣ The respondent may petition the Commission for reconsideration.



Discipline

- ▣ The Commission may recommend that the respondent be
 - Reprimanded,
 - Ordered to cease and desist the offensive action,
 - Ordered to return money or items or offer restitution for anything improperly received ,
 - Suspended or terminated (if an employee),
 - Ordered to make a charitable donation to a charity in the amount of an improper gift or contribution.
- ▣ The Commission may also fine an offender up to \$5,000.



PURCHASING AND CONFLICTS OF INTEREST

Nancy J. Wolfe

First Assistant State's Attorney

Purpose of Competitive Bidding

Competitive bidding statutes are enacted to “invit[e] competition, to guard against favoritism, improvidence, extravagance, fraud and corruption and to secure the best work or supplies at the lowest price practicable.”

- *Court Street Steak House, Inc. v. County of Tazewell*, 1630, Ill.2d 159, 165 (1994) quoting 10 McQuillin on Municipal Corporations sec 29.29 at 375 (3d ed. 1966).



How the Procurement Process Works

- All Requisitions go to Procurement
 - The requisition represents the first step in the procurement process ultimately resulting in a purchase order.
 - Some elected officials are not statutorily required to utilize the County procurement process.

- Dollar Amount determines the Approval Process
 - \$5,000 - \$14,999 Parent Committee
 - Over \$15,000 Parent Committee, Finance Committee and County Board

- Documentation review hierarchy:
 - Buyer
 - Procurement Manager
 - Chief Financial Officer (over \$15,000)
 - Chief of Staff (over \$25,000)
 - Parent Committee (final action if under \$15,000)
 - Finance Committee
 - County Board



How the Process Works

- ▣ The DuPage County Procurement Process is more restrictive than the State requires:
 - Additional review steps and procedures
 - Parent Committee and County Board approval level
 - Quotation requirement level
 - Formal Bid requirement level



Approval Process/Levels

- ▣ Purchase Orders (POs) under \$5,000 - Department head discretion, no Committee approval required
- ▣ POs \$5,000-\$15,000 - Parent Committee approval
- ▣ POs over \$15,000 - County Board approval
- ▣ All Purchase Requisitions reviewed by Procurement Services Division for statutory and purchasing ordinance compliance, prior to Committee/Board action.



Procurement Benefits

- ▣ Provides a firewall between vendors and departments, Board Members
- ▣ Provides objectivity in procurement process
- ▣ Assures the use of nationally recognized professionals standards and practices
- ▣ Allows for review by the State's Attorney when requested
- ▣ Ensures County's fiduciary responsibility
- ▣ More stringent standards than State of Illinois
- ▣ Enhanced documentation of purchase criteria



Bribery and Kickback Red Flags

- ▣ Rising expenses for goods and services.
- ▣ Slow deliveries from or substandard performance by a vendor.
- ▣ Rapidly increasing purchases from one vendor.
- ▣ Excessive purchases of goods or services.
- ▣ No division of duties between new vendor approval and authorization for purchasing.



Bribery and Kickback Red Flags

- ❑ Contracts written to limit competition (I.E. sole-source contracts).
- ❑ The same vendor always wins contracts by small margins.
- ❑ The contract always goes to the bid received last.
- ❑ Splitting one purchase into multiples to avoid the approval process.
- ❑ Paying above market prices for goods or services.



Deb O'Brien

- ❑ Stole restitution money from crime victims.
- ❑ Several internal control procedures were in place:
 - Supervisor oversight
 - Internal auditing
 - External auditing
 - Co-signing on checking accounts
 - Periodic reviews



Public Integrity

"Unless a man is honest we have no right to keep him in public life, it matters not how brilliant his capacity, it hardly matters how great his power of doing good service on certain lines may be... No man who is corrupt, no man who condones corruption in others, can possibly do his duty by the community."

-Theodore Roosevelt



Conflict of Interest

- ▣ Misuse of office or position for private gain
- ▣ It is the duty of any public official to give impartial and faithful service

“No responsibility of government is more fundamental than the responsibility of maintaining the highest standards of ethical behavior - all officials must act with unwavering integrity, absolute impartiality and complete devotion to the public interest.”

- John F. Kennedy



“Willie Stark”

- ▣ In the novel and movie “All the King’s Men,” fictional Louisiana politician Willie Stark is motivated to enter politics by a desire to do good for the “little” people, i.e. to help the people he was elected to serve.



“Willie Stark”

- ▣ BUT He does everything possible to make sure his vision of good succeeds *no matter what the cost.*



Prohibited Interests in Contracts

50 ILCS 105/3

- ▣ Formerly known as “An Act to Prevent Corrupt Practices”
- ▣ Is a Class 4 felony
- ▣ Cannot “abstain” to avoid application of this prohibition.
 - A.G. Opinion: “It is my opinion that the abstention from voting does not prevent a conflict of interests [under the Act].”



Enforcement

- ▣ Ethics Complaint
- ▣ Criminal Prosecution
- ▣ Declaratory Action
- ▣ Breach of Contract / “Malicious Prosecution”
 - *Mulligan v. Village of Bradley*, 131 Ill.App.3d 513 (3d Dist 1985)
- ▣ Injunction to bar criminal prosecution
 - *Miller v. Lake County*, 79 Ill.2d 481 (1980)



Common Law Conflicts of Interest

Faithful performance of official duties is best secured if the officer is not called upon to make decisions that may advance or injure his individual interest.

A conflict of interest exists when a public official votes or takes any action on a matter in which he has a direct and pecuniary interest.



DuPage County Investigations

In DuPage County, we have investigated and prosecuted schemes involving the following Public Corruption/“White Collar” crimes:

- ❑ Election petition fraud.
- ❑ Official Misconduct.
- ❑ Attorney misconduct involving theft of client funds.
- ❑ Attorney misconduct involving bribery of witnesses.
- ❑ Prohibited Interest in Contracts.
- ❑ County employee voluntary buyout program fraud.
- ❑ Pension fraud.
- ❑ Police misconduct.



DuPage County Investigations

In DuPage County, we have investigated and prosecuted schemes involving the following Public Corruption/"White Collar" crimes:

- ▣ Telemarketing fraud.
- ▣ Money laundering.
- ▣ Organized drug conspiracies.
- ▣ Bookmaking operations.
- ▣ Data hacking.
- ▣ Theft of trade secrets.
- ▣ Computer and chip theft.
- ▣ Child Internet pornography.
- ▣ Confidence crimes fraud.



The Role of the State's Attorney

- ▣ The structure and operations of the DuPage County State's Attorney's Office are designed to encourage the reporting of white collar crime and to keep pace with advances in technology which are now being used by criminals.
- ▣ This structure includes
 - The Public Integrity/Financial Crimes Unit.
 - Technology Crimes Unit.
 - Financial Crimes Investigators.
 - B.A.T.T.L.E. Investigator and Prosecutor.



Incompatible Offices

“Incompatibility of offices exists where there is a [real or potential] conflict in the duties of the offices, so that the performance of the duties of one interferes with the performance of the duties of the other.”

- *Rogers v. Tinley Park*, 116 Ill.App.3d 437 at 441 (1st Dist 1983).



Mark Twain

“It seems to me that a man should secure the well done, faithful servant, of his own conscience first and foremost, and let all other loyalties go.”



THANK YOU