Ethics, FOIA, and Conducting Public Meetings

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Disclaimer

This presentation contains educational material that provides only a general overview. This presentation and materials do not constitute legal advice. Please contact us if you would like specific legal advice.
WHAT IS ETHICS?

• A moral code that governs a person’s or group’s behavior

• Synonyms: moral code, morals, morality, values, rights and wrongs, principles, ideals, standards (of behavior), value system, virtues, dictates of conscience

• The concept is very broad

• Focus today is on “professional” ethics; how you conduct yourself within the realm of your public service
WHY DO WE CARE?

- Like it or not, you are engaged in public service, whether elected or appointed, paid or volunteer
- You are subject to enhanced scrutiny of your moral character
- You are required to comply with State and local laws regarding ethics
- The failure to act properly could have legal, employment, financial and/or embarrassing consequences
Purpose of Ethics Rules

• Ensure governmental decisions and policies are made through the proper channels.
• Prevent public office from being used for personal gain.
• Promote public confidence in the integrity of its government.
CONFLICTS OF INTEREST

• Generally speaking, ethics rules are designed to avoid actions when the action presents a conflict of interest for the actor.

• What is a conflict of interest?
  – A term used to describe the situation in which a public official or fiduciary who, contrary to the obligation and absolute duty to act for the benefit of the public or a designated individual, exploits the relationship for personal benefit, typically but not always pecuniary.
CONFLICTS OF INTEREST: General Considerations

• Primary vs. Secondary Interests
  – Not always aligned
  – Requires Introspection

• The “BUT FOR” Rule
  – Legal term for causation
  – Useful in determining conflicts
APPEARANCE OF IMPROPRIETY

• Standard applied to judges and others by statute and common law
• Means that there need be no rule that specifically prohibits your conduct but, nonetheless, you must consider what a reasonable member of the general public would think.
• “The appearance of impropriety is a phrase referring to a situation which to a layperson without knowledge of the specific circumstances might seem to raise ethics questions. For instance, although a person might regularly and reliably collect money for her employer in her personal wallet and later give it to her employer, her putting it in her personal wallet may appear improper and give rise to suspicion, etc. It is common business practice to avoid even the appearance of impropriety.”

• Bottom Line: It is something to AVOID!
APPEARANCE OF IMPROPRIETY

Have to consider what is best for the Town. Sometimes you have to swallow hard and take the “high road.”
LAWS GOVERNING ETHICS

- Statutory Agency Code of Ethics (e.g., Conn. Gen. Stat. Sections 7-148t, 8-11 and 8-21).
- Municipal Code of Ethics?
Does Your Town Have A Code of Ethics?

• Town Policy: Many towns prescribe ethical standards of conduct for public officials and employees.
• Town Charter
• Code of Ordinances
Does Your Town Have An Ethics Board?

• Any town, city, district, or borough may, by charter provision or ordinance, establish a board, commission, council, committee or other agency to investigate allegations of unethical conduct, corrupting influence or illegal activities levied against any official, officer or employee of such town, city, district or borough. See Conn. Gen. Stat. § 7-148h.
Conflicts of Interest: General Definition

Conflict of interest: Acting in one’s official capacity, when one has

1. a *personal interest*, such as a matter involving a *close relative or business associate*; or

2. a *financial interest*. 
Personal Conflict of Interest - Example

- You are the new First Selectman
- You are charged with appointing various commission and board members for the Town
- A particular resident is seeking appointment to the ethics board
- He is well qualified for the job as he sits on the State Ethics Board
- He did not vote for you in the last election and is in a different registered political party
- You know he is the right person for the job and would benefit the Board but you don’t like him and want to stick it to him because he did not vote for you.
Conflicts of Interest - Close Relative or Business Associate

• A relationship that would tend to influence improperly that individual's judgment, in his official capacity, on a particular issue or item.
Conflicts of Interest - Close Relative or Business Associate - Example

- The town is seeking to hire an assistant tax collector.
- Although, there will be three people from the town interviewing candidates, the Mayor will make the ultimate decision.
- The Mayor is in the excavation business.
- John works for a company that Mayor relies upon to supply most of the gravel needed for Mayor’s company projects.
- John also threw a political fundraiser for the Mayor last year.
- John mentions to the Mayor that his son is applying for the job and that “he’s an ideal candidate.”
  - Any issue with the mayor hiring John’s son?
  - What if John’s son is most qualified and the best candidate?
  - What if John is the mayor’s brother? Nepotism?
Conflicts of Interest - Close Relative or Business Associate – Example

• You are a member of the Board of Assessment Appeals.

• You are also a dentist and most of your patients reside in town.

• You are slated to hear a current patient’s appeal of his/her real estate taxes
Conflicts of Interest - Financial Conflicts

May not have a financial interest in Town matters. In most towns with an ethics code it, it applies to any:

- Contract with the Town,
- Sales to the Town,
- Purchases from the Town, or
- Compensable services involving the Town.
Conflicts of Interest - Financial Conflicts

- Includes outside employer or close family member.
- Includes interest as a principal, surety, officer, or partner in a company.
- Exception for competitively-bid contracts.
Conflicts of Interest – Financial Conflicts - Example

- You work for the Department of Public Works.
- You also operate a snow plow business.
- You’ve negotiated a contract with the Town for your company to plow all of the municipal parking lots.
- Any problem?
- What if you offered the best price?
- What if the contract was with your spouse’s company?
- What if the contract was with your friend’s company?
Use of Town Property

May not *use* or *permit the use* of:

1. Town funds,

2. Town services, or

3. Town property, equipment or materials

Except for proper purposes of the Town.
Use of Town Property – Example

• You are the town building inspector.

• In order to perform your daily activities, you are given a municipal car.

• Rather than drive back to the town hall after making afternoon inspections, you occasionally use the municipal car to commute to/from work.
Gifts, gratuities and favors

May not accept or solicit for personal gain any:
1. improper favor,
2. service, or
3. item of value

If doing so may tend to influence improperly your performance of Town duties.
How does State law define the term - “Gift”? 

• General: Anything of value, including entertainment, food, beverage, travel, and lodging given or paid to a public official or employee, unless consideration of equal or greater value is given by the public official or employee in return.

• See definitions in C.G.S. § 1-79
How do I know if I have a conflict of interest?

• What does your local code or general statute say?
• Where there is no express rule, ask yourself, “Can I make a fair determination and not be influenced by the suspect relationship?”
• Remember: Appearance of Impropriety.
• Follow your avenues for assistance and/or ask the Town Manager, Mayor or the Town Attorney for assistance.
If you *have* a conflict of interest – what should you do?

- May not act in any official town capacity to influence or affect the matter.
- Must “recuse” (disqualify) yourself from participating in the matter:
  - Voting or making a determination.
  - Discussing the matter on or off the record.
Written Disclosures Requirement

- Immediately disclose the nature and extent of that interest.
- Disclosure should be in writing and preferably addressed to the Town Clerk, Town Manager or Mayor.
Following Disclosure

• Disqualified from any discussion, action or vote on the matter.
• May not in any way condone, promote, encourage, influence or otherwise attempt to affect action.
• May not act in any way that will or may conflict with Town duties.
Confidential Information

- Can’t *disclose* confidential information concerning the Town’s property, government business or affairs to others.
- Can’t *use* confidential information for private benefit of self or others.
Example - Confidential Information

• Knowing that the Town may buy or develop a piece of land, acquire adjoining property which is likely to increase in value.

• Advise a friend or family member about plans to develop or acquire a piece of land, so they may benefit similarly.
Appearance on Behalf of Private Interests

*May depend upon your local code of ethics.*

*State Laws preclude Such Representation for Various Land Use Boards and Purchasing Agents*

- C.G.S. §7-148t
- C.G.S §8-11
- C.G.S §8-21
Violations and Penalties

Possible repercussions include:
1. Termination of employment,
2. Removal from office,
3. Civil Fine
4. Censure, and
5. Possible voiding of contract, transaction or decision.
Violations and Penalties

Various criminal statutes can apply, including the following:

• Larceny, including defrauding a public community of any value. Larceny in the first degree is a Class B felony. See Conn. Gen. Stat. §53a-122.


• PURPOSES OF FOIA
  – FOIA provides the public the right to attend “meetings” of and obtain “public records” from all “public agencies” with certain enumerated exceptions.
  – Promotes open government.
Public Agency

- “Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official, and also includes any judicial office, official, or body or committee thereof but only with respect to its or their administrative functions.”

VERY BROAD – generally any person or group that serves a public function
Open Meeting Requirements

• FOIA provides the public the right to receive information about and to attend meetings of public agencies.

• Meetings: means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power.
Meetings Defined

• The assembly or convening of a quorum of a public agency; and/or

• Communications to or from a quorum of a public agency when the purpose is to

• Discuss or act upon any matter over which the public agency has “supervision, supervision, control, jurisdiction or advisory power
Meetings

• Meetings can occur anywhere – intentionally or otherwise:
  • Town Hall
  • Your home
  • Dairy Queen
  • Telephone
  • Email
  • Text message, skype, internet chat, etc.
PUBLIC MEETING EXCEPTIONS

Sometimes a quorum is not a meeting:

• Any chance meeting, or a social meeting neither planned nor intended for the purpose of discussing matters relating to official business;

• A personnel search committee for executive level employment candidates;

• Strategy or negotiations with respect to collective bargaining; or

• A caucus of members of a single political party.
Other Exceptions

• Communications to or from a quorum about the time and place of a meeting.
• Communications about the published agenda.
• Attendance by a quorum at a noticed meeting of another public agency.
• Administrative or staff meetings of a single-member public agency.
Caucusing

• Members of a single political party may meet to discuss party strategy, even if the meeting would otherwise constitute a quorum.
• The presence of third parties can negate the caucus.
Access to Meetings

Per FOIA, Access to Public Meetings Requires;
- Public notice of the meeting
- Public notice of the agenda
- Access to meeting minutes
- Right to attend and observe the meeting
- No registration requirements at meetings
- Right to record, photograph and broadcast

THERE IS NO RIGHT TO SPEAK OR BE HEARD
   If you allow public comment, must allow all to speak
Types of Public Meetings

• Regular Meetings
• Special Meetings
• Emergency Meetings
Regular Meeting

• **Notice:** Filed with the Town Clerk by Jan. 31 of each calendar year.

• **Agenda:** 24 hours prior to the meeting.

• **Other business:** Added by a separate, 2/3 vote of those present.

• **Minutes:** Within 7 days
Special Meeting

• **Notice:** Filed with the Town Clerk at least 24 hours prior to the meeting.

• **Agenda:** 24 hours prior to the meeting.

• **Other business:** Cannot be added.

• **Minutes:** Within 7 days.
Emergency Meeting

- **Notice:** None. Must be a bona fide emergency such that 24 hours notice is impossible.

- **Agenda:** None.

- **Other business:** None.

- **Minutes:** Within 72 hours.
  - Must describe the nature of the emergency.
Moving & Rescheduling

• Relocating a meeting:
  – 30 days advance notice to Town Clerk if possible.
  – Post notice on door at time & place.
  – Last minute changes due to large crowds or facility problems.
Agendas and Minutes

• All notices, agendas and minutes should be posted on the Town’s website, if available.

• **Agendas:** Adequate to give notice to members of the public of the business that is planned to be transacted at a given meeting
Agendas and Minutes

• Minutes:
  – Time & Place
  – Members Present
  – Business transacted
  – Including any votes by member
  – Executive session
    – Including reason, but exclude detail of discussion.
  – Time adjourned
Notice of Votes

–Separate from the minutes requirements, notice of votes must be written and available for public inspection within 48 hours of any meeting
Executive Sessions

• Exclude the public for specified reasons only

• 2/3 majority must vote in open session to enter executive session.

• Must state applicable basis

• Can invite others into executive session to provide information only. Must be excused once relevant participation concludes
Bases For Executive Sessions

1. Appointment, employment, performance, evaluation, health or dismissal of a public officer or employee.
   - Officer or employee can require open session.

2. Strategy or negotiations with respect to pending claims or pending litigation.
   - Not general legal advice

3. Security strategy or the deployment of security personnel.

4. The selection of real estate for purchase, sale or lease.
   - Where public disclosure is likely to affect price.

5. Discussion which would result in the disclosure of exempt public records
Executive Session

• Third parties may be present to provide information or opinion.
  – *Must be limited to time period necessary.*

• Cannot vote in executive session.

• Minutes must provide notice of basis for executive session, but need not disclose protected information.
Public Records

• Records or files of public agencies, including minutes of meetings, are considered “public records.”
• Must be made available to the public for inspection or copying
• Includes all types of records:
  – Typed, handwritten, tape recorded, printed, photographed or stored electronically.
  – Recommend not using personal email or computer for public agency business. Create a separate account.
  – Memoranda, letters, emails, voicemails, and texts.
  – Documents received and retained by the public agency
Public Records Requests

• No required form or magic words must be used.
  – The Town may require requests be in writing.
• Documents may be inspected during regular business hours.
• Must respond “promptly.”
  – Depends on size & urgency of request.
  – Depends on size & other priorities of public agency.
• Always acknowledge requested within 4 business days
Public Record Requests

• May charge up to $0.50 per page for copies.
  – No charge to inspect.
  – Handheld scanners are allowed, but may charge.
• Additional fees may apply for certified copies.
• May require prepayment for fees of $10.00 or more.
• May charge actual costs for unusual public records
Public Record Requests

• Practical advice:
  – Respond promptly even if production will take awhile.
  – Mention possibility of applicable exemptions.
  – Can offer to narrow request for a quicker or less expensive response.
  – No obligation to “create” public records where non exist.
Disclosure Exemptions

1. Preliminary drafts or notes where the public interest in withholding such documents clearly outweighs the public interest in disclosure;
2. Personnel or medical files under certain conditions;
3. Certain law enforcement records, including arrest records of juveniles and some witness and victim identification information;
4. Records relating to pending claims and litigation;
5. Trade secrets and certain commercial or financial information under certain conditions;
6. Test questions used to administer licensing, employment or academic examinations;
7. Real estate appraisals and construction contracts until all of the property has been acquired;
8. Personal financial data required by a licensing agency;
9. Records relating to collective bargaining;
Disclosure Exemptions

10. Records relating to collective bargaining;
11. Tax returns and communications privileged by the attorney-client relationship;
12. Names and addresses of public school students;
13. Information obtained by illegal means;
14. Certain investigation records of reported misconduct in state government or names of state employees who report such misconduct to the state Attorney General or Auditors;
16. Certain adoption records; Election, primary, referenda and town meeting petition pages, until certified;
17. Certain health authority complaints and records;
18. Certain educational records;
Disclosure Exemptions

19. Certain records, when there are reasonable grounds to believe disclosure may result in a safety risk;

20. Certain records, if disclosure would compromise the security or integrity of an information technology system;

21. Records of personnel search committees need if they would identify executive level employment candidates without their consent;

22. Address of participant in a confidentiality program;

23. Certain e-mail address obtained by DOT;

24. Name or address of a minor enrolled in a parks and recreation program;

25. Response to RFP, until contract is awarded, if CEO certifies public interest in disclosure is outweighed by public interest in confidentiality; and

26. Names and contact information of persons enrolled in senior center program.
Request for Personnel, Medical or Similar, Files (C.G.S. §1-214)

- May be exempt for disclosure if
  1. Not a matter of public interest;
  2. Constitutes a undue invasion of privacy; and
  3. Individual objects.
- Give individual and union notice of request immediately.
- Seven (7) business days to file a written objection.
- Objection on a form provided by the Agency
  - Must be signed under penalties of false statement, that to the best of his or knowledge, information and belief, there is a good grounds to support objection and that objection is not interposed for delay.
Other Provisions To Note

• Non-Disclosure of Uncorroborated Allegations of Criminal Activity
  Conn. Gen. Stat. §1-216

• Non-Disclosure of Residential Addresses of Certain Individuals
  Conn. Gen. Stat. §1-217
CONDUCTING A PUBLIC MEETING

“This had better be good.”
RULES OF ORDER

• Purpose for having Rules of Order:
  – Maintain order
  – Ensures everyone has chance to participate
  – Ensures that all necessary business is addressed
Types of Rules

• Town policy or procedure
• Parliamentary procedure
• Robert’s Rules
• Consensus
PRELIMINARY CONSIDERATIONS

• Running an effective meeting requires advance planning
• Give your agenda appropriate attention
• Disseminate relevant information in advance
• Run your meetings on time
• Follow the meeting rules
ORDER OF BUSINESS / AGENDA

• The chair guides the meeting through the order of business. A typical order of business might be:

• 1. Call to Order

• 2. Roll call; seating of alternates

• 3. Reading of the minutes of the previous meeting, amendment and approval;

• 4. Hearing the reports of standing committees;

• 5. Hearing of the reports of select committees;

• 6. Consideration of unfinished business;

• 7. Consideration of new business;

• 8. Approval of bills for payment;

• 9. Setting the time and place for the next meeting;

• 10. Setting the preliminary agenda for the next meeting; and

• 11. Adjournment.
ROBERT’S RULES OF ORDER

• Typical parliamentary procedure
• Used by many towns, boards and commissions
• Business is conducted through the use of formal motions
Four Basic Types of Motions

1. **Main Motions**: The purpose of a main motion is to introduce items to the membership for their consideration. They cannot be made when any other motion is on the floor, and must yield to privileged, subsidiary, and incidental motions.

2. **Subsidiary Motions**: Their purpose is to change or affect how a main motion is handled, and is voted on before a main motion.

3. **Privileged Motions**: Their purpose is to bring up items that are urgent about special or important matters unrelated to pending business.

4. **Incidental Motions**: Their purpose is to provide a means of questioning procedure concerning other motions and must be considered before the other motion.
How are Motions Handled?

- Motions are always addressed to and handled by the Chairman

- Motions Should be stated in the affirmative, e.g. "I move that we ..." rather than, "I move that we do not ...".

- Motions must be seconded before discussed. Unless volunteered, the chair calls for a second. If there is no second, the motion is lost.

- If the Motion is seconded, deliberation ensues
Voting on a Motion

The method of vote on any motion depends on the situation and the by-laws of policy of your organization. There are three methods used to vote in most public meetings:

1. **By Voice:** The Chairman asks those in favor to say, "aye", those opposed to say "no". Any member may move for an exact count.

2. **By Roll Call:** Each member answers "yes" or "no" as his name is called. This method is used when a record of each person's vote is required.

3. **By General Consent:** When a motion is not likely to be opposed, the Chairman says, "if there is no objection ..." The membership shows agreement by their silence, however if one member says, "I object," the item must be put to a vote.
Other Parliamentary Considerations

CONTROL THE FLOOR.
- All speakers should be recognized by the Chair before speaking
- All concerns, considerations and questions from or to the public should be presented through the Chair.

DEAL PROPERLY AND PROMPTLY WITH DISRUPTIVE BEHAVIOR.
- Make sure your rules provide grounds for ejectment from the meeting, whether the disruption is caused by the member of the public or a fellow board member

FOLLOW YOUR AGENDA

STICK TO YOUR RULES OF PROCEDURE

TREAT EVERYONE EQUALLY WELL
ADJOURNED!
Questions
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