

Statutory Requirements and Ethical Considerations for Public Officials

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Prohibited Interests in Contracts

- Public Officer Prohibited Activities Act, 50 ILCS 105/3(a)
 - No person holding office by election or appointment may be in any manner financially interested, directly or indirectly, in any contract or procurement for which that person may be called upon to act or vote. No such person may accept a gift or bribe to influence vote or action. Any contract made in violation of this section is void.
- Common law

Exceptions Allowing Interests in Contracts: Section 3(b) of Public Officer Prohibited Activities Act

- Public body may contract with an entity in which the interested member has less than a 7.5% share in the ownership if:
 - Contract amount exceeds \$1,500, and contract is awarded to lowest responsible bidder after sealed bids, and the award does not cause aggregate amount of all such contracts to the awardee in a fiscal year to exceed \$25,000; or
 - Contract amount is \$1,500 or less, and the award does not cause aggregate amount of all such contracts to the awardee in a fiscal year does not exceed \$25,000; or
 - Contract does not exceed \$2,000 and the total amount of all contracts to the awardee in the fiscal year does not exceed \$4,000.
- Public body may contract with an entity in which the interested member has less than a 1% share in the ownership.
- Must follow procedure for disclosure, abstention, and majority vote (next slide)
- See statute for other specific exceptions.

Exceptions Allowing Interests in Contracts

- Procedure for Section 3(b) Exceptions:

1. The interested member must publicly disclose the nature and extent of the interest prior to or during the deliberations concerning the proposed award of the contract.
2. The interested member must abstain from voting on the award of the contract, although he or she may be considered present for purposes of quorum.
3. The award of the contract must be approved by a majority vote.

Common Law Conflicts of Interest

- Faithful performance of official duties is best secured if governmental officers, like any other persons holding fiduciary positions, are not called upon to make decisions that could result in a personal advantage or disadvantage to their individual interests.
- Direct conflict of interest cases. Public officers may not have an interest directly in their own names in any contract work, or business of the public body, with a few limited exceptions.

The State Officials and Employees Ethics Act (5 ILCS 430/1-1, et seq.)

- Applies broadly to state officers and employees.
- Requires local governments to have an ordinance or resolution concerning prohibited political activities and gift ban provisions no less restrictive than the provisions in the Act.
- Be sure to check your local ordinance or resolution. It could be more restrictive than the Act provisions applicable to state officers and employees.
- Governs:
 - Prohibited Political Activity:
 - During compensated time.
 - Includes use of government property or resources.
 - The Gift Ban

Prohibited Political Activity

- Employees are prohibited from intentionally performing prohibited political activity during any compensated time, including lunch time. Compensated time does not include vacation, personal or compensated time off. 5 ILCS 430/5-15.

Prohibited Political Activity (cont'd)

Prohibited political activities include:

- Preparing for, organizing, or participating in any political meeting, political rally, political demonstration or other political event.
- Soliciting contributions, including but not limited to the purchase of, selling, distributing, or receiving payment for tickets for any political fundraiser, political meeting, or other political event.
- Soliciting, planning the solicitation of, or preparing any document or report regarding anything of value intended as a campaign contribution.

Prohibited Political Activity (cont'd)

- Planning, conducting, or participating in a public opinion poll in connection with a campaign for elective office or on behalf of a political organization for political purposes or for or against any referendum question.
- Surveying or gathering information from potential or actual voters in an election to determine probable vote outcome in connection with a campaign for elective office or on behalf of a political organization for political purposes or for or against any referendum question.
- Assisting at the polls on election day on behalf of any political organization or candidate for elective office or for or against any referendum question.

Prohibited Political Activity (cont'd)

- Soliciting votes on behalf of a candidate for elective office or a political organization or for or against any referendum question or helping in an effort to get voters to the polls.
- Initiating for circulation, preparing, circulating, reviewing, or filing any petition on behalf of a candidate for elective office or for or against any referendum question.
- Making contributions on behalf of any candidate for elective office in that capacity or in connection with a campaign for elective office.

Prohibited Political Activity (cont'd)

- Preparing or reviewing responses to candidate questionnaires in connection with a campaign for elective office or on behalf of a political organization for political purposes.
- Distributing, preparing for distribution, or mailing campaign literature, campaign signs, or other campaign material on behalf of any candidate for elective office or for or against any referendum question.
- Campaigning for any elective office or for or against any referendum question.
- Managing or working on a campaign for elective office or for or against any referendum question.

Prohibited Political Activity (cont'd)

- Serving as a delegate, alternate, or proxy to a political party convention.
- Participating in any recount or challenge to the outcome of any election, except to the extent that under subsection (d) of Section 6 of Article IV of the Illinois Constitution each house of the General Assembly shall judge the elections, returns, and qualifications of its members.

Prohibited Political Activity (cont'd)

- Employees may not intentionally misappropriate any governmental property or resources by engaging in any prohibited political activity for the benefit of any campaign for elective office or any political organization. 5 ILCS 430/5-15(a).
 - Ex. Employees may not use a government-issued telephone or cell phone to make campaign calls after working hours. Nor can employees use government fax machines, computers, or workspaces to engage in prohibited political activity during the lunch hour or after work.

State Ethics Act, Article 10: The Gift Ban

- Gift Ban:
 - Employees, their spouses and family members living at home may not intentionally solicit or accept gifts from prohibited sources. Employees who receive gifts in violation of the ban should attempt to return them or donate an amount equal to the value of the gift to an appropriate charity. 5 ILCS 430/10-10.

State Ethics Act – Gift Ban

- Gift Definition: “[A]ny gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to government employment or the official position of an employee, member, or officer.” 5 ILCS 430/1-5.

State Ethics Act – Gift Ban

A “prohibited source” includes any person or entity:

- Who is seeking official action by the officer or employee who does business or seeks to do business with an officer or employee.
- Who conducts activities regulated by an officer or employee.
- Who has interests that may be substantially affected by the performance of the official duties of the officer or employee.
- Is registered under the Lobbyist Registration Act.
- A person who is living with a “prohibited source”.

105 ILCS 430/1-5

Exceptions to the Gift Ban

- Gifts available on the same conditions to the general public.
- Anything for which market value is paid.
- Lawfully made campaign contributions.
- Educational material or missions.
- Travel expenses for a meeting to discuss business.
- Gifts from a relative.
- Gifts given on the basis of personal friendship.
- Food or refreshments not exceeding \$75 per person in value on a single calendar day; provided that the food or refreshments are (i) consumed on the premises from which they were purchased or prepared, or (ii) catered.
- Any item from any one prohibited source during any calendar year having a cumulative value of less than \$100.

Gift Ban Act Clemency Clause

- Sec. 10-30. Gift ban; disposition of gifts. A member, officer, or employee does not violate this Act if the member, officer, or employee promptly takes reasonable action to return the prohibited gift to its source or gives the gift or an amount equal to its value to an appropriate charity that is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as now or hereafter amended, renumbered, or succeeded.

Local Government Travel Expense Account Act

- Public Act 99-604 regulates the reimbursement for all travel, meal and lodging expenses for school districts, community colleges, and non-home rule units, and their employees and officials.
- The Regulations: At a minimum, local public agencies must adopt regulations by resolution on the reimbursements of all travel, meal and lodging expended for its officers and employees which includes the following elements:
 - The types of official business for which travel, meal, and lodging expenses are allowed;
 - The maximum allowable reimbursement for such expenses; and
 - A standardized form for use in obtaining reimbursement.
- The law contemplates that public bodies will adopt more stringent rules and restrictions on travel related expenses for elected officials and board members.

Local Government Travel Expense Account Act

- Documentation of Expenses: The regulations should provide that the form submitted for reimbursement must be supported by at least the following information:
 - The name and title of the individual seeking reimbursement;
 - A cost estimate of expenses not yet incurred or a receipt if expenses have been incurred; and
 - The dates and the nature of the official business in which the expenses were or will be incurred.

Local Government Travel Expense Account Act

- Approval of Expenses: a roll call vote of the Board is required for approval of the expenses of an officer or employee that exceeds the maximum allowable reimbursement.
 - Additionally, all expenses for any member of the Board, regardless of amount, must be approved by roll call vote.
 - No travel, meal, or lodging expenses can be approved or paid unless regulations have been adopted by the Board.
- No Entertainment: The Act prohibits local public agencies from reimbursing expenses for “entertainment”.

Criminal Code, Article 33, Official Misconduct

- Section 33-3: A public officer or employee commits misconduct when, in his official capacity he commits any of the following acts:
 - Intentionally or recklessly fails to perform any mandatory duty as required by law; or
 - Knowingly performs an act which he knows he is forbidden by law to perform; or
 - With intent to obtain a personal advantage for himself or another, he performs an act in excess of his lawful authority; or
 - Solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law.
- A public officer or employee or special government agent convicted of violating any provision of this Section forfeits his or her office or employment or position as a special government agent. In addition, he or she commits a Class 3 felony.

Criminal Code, Article 33E, Public Contracts

- Section 33E-3 (Bid Rigging – a Class 3 Felony):
 1. Knowingly agreeing with a competitor concerning any bid submitted or not submitted with the intent that the bid submitted or not submitted will result in the award of a contract to such person or another; and
 2. Providing such competitor with or receiving from another information concerning the bid that would not normally be disclosed to a competitor or submitting a bid that is of such a price or other material term or terms that he or she does not intend the bid to be accepted.

Criminal Code, Article 33E, Public Contracts

- Section 33E-5 (Acquisition or disclosure of sealed bidding information by a public official):
 - Knowingly opens a sealed bid other than as specified or outside the presence of required witnesses (Class 4 Felony); or
 - Knowingly discloses to interested person any information related to the terms of a sealed bid, except as provided by law (Class 3 Felony); or

Criminal Code, Article 33E, Public Contracts

- Section 33E-6 (Interfering with contract submission and award):
 - Knowingly conveys to any person, outside of publicly available information, any information that would influence likelihood of acceptance of bid or offer. (Class 4 Felony)
 - Knowingly informs bidder or offeror of acceptance conditioned on inclusion of certain individuals as subcontractors. (Class 3 Felony)

Criminal Code, Article 33E, Public Contracts

- Section 33E-7 prohibits public officials from receiving an offer of a kickback, or failing to report solicitation of kickback. (Class 4 Felony)
- The public body may, in a civil action, recover a civil penalty from any person who knowingly engages in conduct which violates the kickback provision in twice the amount of each kickback involved in the violation. This does not limit the ability of the public body to recover monies or damages regarding public contracts under any other law or ordinance.

Overview of Ethical Considerations

- Public officials and employees must be aware that their actions and relationships may create a conflicts of interest and/or the appearance of an impropriety.
- With a few, limited exceptions, being financially interested, either directly or indirectly, in any contract, work, or business of the public body you serve may be a violation of law and may expose you and your employer to significant liability, both civil and criminal.
- If there is ANY doubt, consult legal counsel before you act.

Statutory Immunity

- Local Governmental and Governmental Employees Tort Immunity Act:
 - Broadly defines “local public entity”.
 - Immunities are contained in Sections 2-201 to 2-214.
 - Immunities apply to the governing board as an entity, and, in certain cases, to individual board members and/or employees.

Immunity in Official Capacity: Tort Immunity Act

- Immunities include, but are not limited to:
 - Section 2-201—Absolute immunity for discretionary actions that fall within official discretion as a member of the board.
 - Section 2-103 and 2-205—Immunity for adopting or failing to adopt an enactment.
 - Section 2-104 and 2-206—Immunity for claims that arise from the issuance, denial, suspension, or revocation of a permit, license, or certificate as well as for the failure to issue, deny, or revoke, any such license.

Immunity in Official Capacity: Tort Immunity Act

- Immunities include, but are not limited to:
 - Section 2-107 and 2-210—Immunity for alleged libelous or slanderous statements.
 - Immunity extends to negligent misrepresentations while acting within scope of employment.
 - Immunity is not extended to intentionally to false statements.
 - Immunity protection will not extend to “Willful and Wanton Conduct”.

Indemnification

- Tort Immunity Act, Section 2-302
 - If a lawsuit is filed against a board member and arises out of conduct which occurred within his or her official capacity, the public body may elect to do one or more of the following:
 - Appear and defend against the claim.
 - Indemnify the defendant for court costs incurred in defense.
 - Pay or indemnify the defendant from a judgment.
 - Pay or indemnify the defendant for settlement of the claim.



Thank You for the opportunity, IGFOA!

Questions?