

CITY COUNCIL MEMORANDUM
07-09


DATE: March 1, 2007
TO: Honorable Mayor and Members of City Council
FROM: Kenneth R. Krushenski, City Attorney
SUBJECT: WORK SESSION AGENDA – MARCH 5, 2007

A work session is scheduled for Monday, March 5, 2007, at 7:00 p.m. in the **Multi-purpose Room at Central Services Center, 100 Woodbury Lane**. The agenda is as follows:

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| I. | Welcome and Introductory Remarks | Kenneth R. Krushenski
City Attorney |
| II. | Code of Ethics for City of Oak Ridge/
MTAS Model/Overview of State Law | Sid Hemsley
Legal Consultant
University of Tennessee/MTAS |

Please bring to the work session the Code of Ethics information that was distributed to Council with Legal Department Memorandum 07-10.

In order to meet the State law deadline of adoption by June 30, 2007, it is anticipated that the City's Code of Ethics will be presented to City Council for consideration at the regular meeting in April.


Kenneth R. Krushenski

Attachments

Copy: Steven R. Jenkins, Deputy City Manager
Department Directors
Oak Ridge School Superintendent
Director of Business and Support Services – Oak Ridge Schools
Board of Education Members

LEGAL DEPARTMENT MEMORANDUM
07-12

DATE: March 1, 2007

TO: Honorable Mayor and Members of City Council

FROM: Kenneth R. Krushenski, City Attorney

SUBJECT: CITY OF OAK RIDGE CODE OF ETHICS – WORK SESSION
MARCH 5, 2007

At the 2006 Extraordinary Session of the 104th General Assembly, the Legislators passed the “Tennessee Comprehensive Governmental Ethics Reform Act of 2006.” The Legislative intent of this law is set out in T.C.A. § 8-17-101 as follows:

T.C.A. 8-17-101. Legislative intent. - It is the intent of the general assembly that the integrity of the processes of local government be secured and protected from abuse. The general assembly recognizes that holding public office and public employment is a public trust and that citizens of Tennessee are entitled to an ethical, accountable and incorruptible government. [Acts 2006 (1st Ex. Sess.) ch. 1, § 49]

The law applies to:

- An incorporated city or town, INCLUSIVE of any boards, commissions, authorities, corporations or other instrumentalities.
- Any official, whether elected or appointed, officer, employee or servant, or any member of any board, agency, commission, authority or corporation, whether compensated or not, or any officer, employee or servant thereof, of a county or municipality.
- A municipal school board and its employees.

The Reform Act charged MTAS with the responsibility of developing models of ethical standards for officials and employees of municipalities:

T.C.A. § 8-17-105. Adoption of models of ethical standards. – The municipal technical advisory service (MTAS) for municipalities and the county technical assistance service (CTAS) for counties, in order to provide guidance and direction, shall disseminate models of ethical standards for officials and employees of such entities. Such models shall be filed with the commission. Any municipality or county that adopts the ethical standards for officials and employees of local government promulgated by MTAS or CTAS is not required to file such policy with the commission but shall notify the commission in writing

that the policy promulgated by MTAS or CTAS was adopted and the date such action was taken [Acts 2006(1st Ex. Sess.) ch.1, § 49.]

The Legal Department has invited Sid Hemsley, Legal Consultant for University of Tennessee/MTAS, to speak at the March 5, 2007 work session and provide Council with an overview of the Ethics Reform Act and answer any questions about this law that Council may have.


Kenneth R. Krushenski

cc: City Manager
Deputy City Manager
Department Heads
Government and Public Affairs Coordinator
School Superintendent
Director of Business of Support Services for Oak Ridge Schools
Board of Education

OUTLINE OF ETHICS PRESENTATION—CITY OF OAK RIDGE (3/5/07)

Sid Hemsley
Legal Consultant
MTAS/UT

Introduction

- Why the “new” concern with ethics
- New State ethics law: Public Acts 2006, Chapter 1 (Extraordinary Session)
- Existing ethics laws
- Ethics provisions of Oak Ridge City Charter and Municipal Code

Place of municipalities in new state ethics law

- Tennessee Code Annotated, § 8-17-102
- Municipalities obviously an afterthought
- Review of municipal provisions of new state ethics law
- Scope of municipal ethics policies under new law

Selected problems municipal ethics policies raise

- Reconciling existing ethics provisions of charters and municipal codes with ethics policy
- Hard or “soft” policy
- Small gifts to officers and employees
- Who shall be the ethics investigator, judge, jury and executioner?
- Other problems

MTAS Ethics Policy

8-16-308

PUBLIC OFFICERS AND EMPLOYEES

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8-16-308. [Transferred.]

Compiler's Notes. Former § 8-16-308 (Acts 1925, ch. 79, § 4; Shan. Supp., § 3199a2; Code 1932, § 5091; T.C.A. (orig. ed.), § 8-1626; Acts 1989, ch. 591, § 113), concerning acting after

expiration of commission, was transferred to § 8-16-120 by Acts 2004, ch. 854, § 18, effective July 1, 2004.

8-16-309. [Transferred.]

Compiler's Notes. Former § 8-16-309 (Acts 1985, ch. 11, §§ 1, 2; Shan., § 3197; Code 1932, § 5897; T.C.A. (orig. ed.), § 8-1627), concerning

depositions taken by notaries public of other states, was transferred to § 8-16-121 by Acts 2004, ch. 854, § 18, effective July 1, 2004.

PART 4—CONSUMER PROTECTION

8-16-401. Notice that notary public is not an attorney. — (a) A notary public who is not an attorney licensed to practice law in this state who advertises in any language the person's services as a notary public by radio, television, signs, pamphlets, newspapers, telephone directory or other written or oral communication, or in any other matter, shall include with such advertisement the notice set forth in this section in English and in the language used in the advertisement. The notice shall be of conspicuous size and shall state:

"I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF TENNESSEE, AND I MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."

An advertisement on radio or television must include substantially the same message.

(b) A notary public who is not an attorney licensed to practice law in this state is prohibited from advising or assisting in selecting or completing forms affecting or relating to a person's immigration status, unless that conduct is specifically authorized by federal law. [Acts 2002, ch. 665, § 1; 2006, ch. 945, § 6.]

Amendments. The 2006 amendment added (b).

Effective Dates. Acts 2006, ch. 945, § 7. July 1, 2006.

CHAPTER 17

ETHICAL STANDARDS FOR OFFICIALS AND EMPLOYEES

SECTION.

- 8-17-101. Legislative intent.
- 8-17-102. Chapter definitions — Application to jointly created instrumentalities, utility districts and school districts.
- 8-17-103. Adoption of ethical standards.
- 8-17-104. Standards open to public inspection

SECTION.

- Filing standards and amendments with ethics commission.
- 8-17-105. Adoption of models of ethical standards.
- 8-17-106. Removal from office for failure to adopt ethical standards — Violations of standards.—

tion of commission, was transferred to -120 by Acts 2004, ch. 854, § 18, effective 2004.

ions taken by notaries public of other was transferred to § 8-16-121 by Acts h. 854, § 18, effective July 1, 2004.

JECTION

ot an attorney. — (a) A notary practice law in this state who ces as a notary public by radio, phone directory or other written atter, shall include with such section in English and in the ice shall be of conspicuous size

TO PRACTICE LAW IN THE T GIVE LEGAL ADVICE OR

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ive Dates. Acts 2006, ch. 945, § 7. 006.

LS AND EMPLOYEES

- Filing standards and amend-ments with ethics commission.
- Adoption of models of ethical stan-dards.
- Removal from office for failure to adopt ethical standards — Vio-lations of standards.—

8-17-101. Legislative intent. — It is the intent of the general assembly that the integrity of the processes of local government be secured and protected from abuse. The general assembly recognizes that holding public office and public employment is a public trust and that citizens of Tennessee are entitled to an ethical, accountable and incorruptible government. [Acts 2006 (1st Ex. Sess.), ch. 1, § 49.]

Compiler's Notes. Acts 2006, ch. 1, § 1 of the extraordinary session of the 104th general assembly provided that act is, and may be cited as the "Comprehensive Governmental Ethics Reform Act of 2006."

Effective Dates. Acts 2006 (1st Ex. Sess.), ch. 1, § 53, February 15, 2006.

Comparative Legislation. Ethics for public employees:

- Ala. Code § 36-25-1 et seq.
- Ark. Code § 19-11-701 et seq.
- Ga. O.C.G.A. § 45-10-20 et seq.
- Miss. Code, Ch. 4, T. 25
- Mo. Rev. Stat. § 105.955 et seq.

8-17-102. Chapter definitions — Application to jointly created instrumentalities, utility districts and school districts. — (a) As used in this chapter, unless the context otherwise requires:

- "Commission" means the Tennessee ethics commission;
 - "County" means a county, metropolitan or consolidated government, inclusive of any boards, commissions, authorities, corporations or other instrumentalities appointed or created by the county or an official of the county. Furthermore, for the purpose of this chapter, the county election commission shall be considered an instrumentality of county government; and the administrator of elections and other employees of the election commission shall be considered county employees. Likewise, for the purpose of this chapter, the county health department shall be considered a county department and its employees shall be considered county employees. Also, likewise, for purpose of this chapter, utility districts shall be considered a county department and its employees shall be considered county employees;
 - "Ethical standards" includes rules and regulations regarding limits on, and/or reasonable and systematic disclosure of, gifts or other things of value received by officials and employees that impact or appear to impact their discretion, and shall include rules and regulations regarding reasonable and systematic disclosure by officials and employees of their personal interests that impact or appear to impact their discretion. The term "ethical standards" does not include personnel or employment policies or policies or procedures related to operational aspects of governmental entities;
 - "Municipality" means an incorporated city or town, inclusive of any boards, commissions, authorities, corporations or other instrumentalities appointed or created by the municipality; and
 - "Officials and employees" means and includes any official, whether elected or appointed, officer, employee or servant, or any member of any board, agency, commission, authority or corporation, whether compensated or not, or any officer, employee or servant thereof, of a county or municipality.
- (b) If a board, commission, authority, corporation or other instrumentality is created by two (2) or more local government entities, such creating entities shall, by amendment to the interlocal agreement or other agreement creating such joint instrumentality, designate the ethical standards that govern the jointly created instrumentality.

(c) For the purpose of this chapter, a utility district that serves an area in two (2) or more counties or municipalities shall be governed by the ethical standards established by the county legislative body of the county in which the largest number of customers is served.

(d) For the purpose of this chapter, a county school board and its employees shall be governed by the ethical standards established by the county legislative body or the governing body of a metropolitan or consolidated government. A municipal school board and its employees shall be governed by the ethical standards established by the municipal governing body. Special school districts shall be considered separate governmental entities and shall be governed by ethical standards established by the board of education of the special school district. [Acts 2006 (1st Ex. Sess.), ch. 1, § 49.]

Compiler's Notes. Acts 2006, ch. 1, § 1 of the extraordinary session of the 104th general assembly provided that act is, and may be cited as the "Comprehensive Governmental Ethics Reform Act of 2006."

Effective Dates. Acts 2006 (1st Ex. Sess.), ch. 1, § 53. February 15, 2006.

8-17-103. Adoption of ethical standards. — Not later than June 30, 2007, the governing body of each entity covered by this chapter shall adopt by ordinance or resolution, as appropriate, ethical standards for all officials and employees of such entity. To the extent that an issue covered by an ethical standard is addressed by a law of general application, public law of local application, local option law, or private act, any ethical standard adopted by a governing body shall not be less restrictive than such laws. [Acts 2006 (1st Ex. Sess.), ch. 1, § 49.]

Compiler's Notes. Acts 2006, ch. 1, § 1 of the extraordinary session of the 104th general assembly provided that act is, and may be cited as the "Comprehensive Governmental Ethics Reform Act of 2006."

Effective Dates. Acts 2006 (1st Ex. Sess.), ch. 1, § 53. February 15, 2006.

8-17-104. Standards open to public inspection — Filing standards and amendments with ethics commission. — Each entity covered by this chapter shall maintain, for public inspection, the ethical standards of such entity and shall cause a copy of the adopted standards to be filed with the ethics commission. Any amendments or other modifications to the ethical standards shall also be filed with the commission as soon as practical after adoption by the governing body. [Acts 2006 (1st Ex. Sess.), ch. 1, § 49.]

Compiler's Notes. Acts 2006, ch. 1, § 1 of the extraordinary session of the 104th general assembly provided that act is, and may be cited as the "Comprehensive Governmental Ethics Reform Act of 2006."

Effective Dates. Acts 2006 (1st Ex. Sess.), ch. 1, § 53. February 15, 2006.

8-17-105. Adoption of models of ethical standards.— The municipal technical advisory service (MTAS) for municipalities and the county technical assistance service (CTAS) for counties, in order to provide guidance and direction, shall disseminate models of ethical standards for officials and

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district that serves an area in all be governed by the ethical body of the county in which the

school board and its employees ished by the county legislative r consolidated government. A ll be governed by the ethical g body. Special school districts ties and shall be governed by ucation of the special school

Effective Dates. Acts 2006 (1st Ex. Sess.), February 15, 2006.

— Not later than June 30, by this chapter shall adopt by standards for all officials and issue covered by an ethical lication, public law of local thical standard adopted by a uch laws. [Acts 2006 (1st Ex.

Effective Dates. Acts 2006 (1st Ex. Sess.), February 15, 2006.

Section — Filing standards

Each entity covered by this e ethical standards of such ndards to be filed with the odifications to the ethical 1 as soon as practical after x. Sess.), ch. 1, § 49.]

Effective Dates. Acts 2006 (1st Ex. Sess.), February 15, 2006.

Standards.— The municipal as and the county technical to provide guidance and tandards for officials and

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employees of such entities. Such models shall be filed with the commission. Any municipality or county that adopts the ethical standards for officials and employees of local government promulgated by MTAS or CTAS is not required to file such policy with the commission but shall notify the commission in writing that the policy promulgated by MTAS or CTAS was adopted and the date such action was taken. [Acts 2006 (1st Ex. Sess.), ch. 1, § 49.]

Compiler's Notes. Acts 2006, ch. 1, § 1 of the extraordinary session of the 104th general assembly provided that act is, and may be cited as the "Comprehensive Governmental Ethics Reform Act of 2006."
Effective Dates. Acts 2006 (1st Ex. Sess.), ch. 1, § 53. February 15, 2006.

8-17-106. Removal from office for failure to adopt ethical standards — Violations of standards.— (a) Members of a governing body of an entity covered by this chapter who fail to adopt ethical standards as provided in this chapter shall be subject to removal from office as provided in chapter 47 of this title.

(b) Violations of ethical standards by officials or employees of entities covered by this chapter shall be enforced in accordance with provisions of existing law. [Acts 2006 (1st Ex. Sess.), ch. 1, § 49.]

Compiler's Notes. Acts 2006, ch. 1, § 1 of the extraordinary session of the 104th general assembly provided that act is, and may be cited as the "Comprehensive Governmental Ethics Reform Act of 2006."
Effective Dates. Acts 2006 (1st Ex. Sess.), ch. 1, § 53. February 15, 2006.

CHAPTER 18

ELIGIBILITY, COMMISSIONS, AND OATHS

SECTION.

8-18-107. Administration of oaths of office.

8-18-109. Filing of oaths of county officers — Administration of oaths.

8-18-107. Administration of oaths of office. — In all cases in which it is not otherwise provided by law, the oaths of office may be administered by any officer authorized to administer an oath. Such oaths shall be written out and subscribed by the person taking them, and shall be accompanied with the certificate of the officer administering the oaths, specifying the day and year when taken. General sessions judges, retired judges and retired chancellors of courts of record of this state may administer the oaths of office to any elected or appointed public official. Upon completion of the oath, the general sessions judge, retired judge or retired chancellor, who administered the oath, shall file the documents in the office of the county clerk. (Code 1858, § 753; Shan., § 1074; Code 1932, § 1816; Acts 1973, ch. 66, § 1; T.C.A. (orig. ed.), § 8-1807; Acts 2003, ch. 5, §§ 1, 2.)

Amendments. The 2003 amendment added "General sessions judges," in the third sentence, and added the last sentence.
Effective Dates. Acts 2003, ch. 5, § 4. March 28, 2003.
Attorney General Opinions. General au-





MTAS

Municipal Technical Advisory Service

*In cooperation with the
Tennessee Municipal League*

#130

HOT topic

July 25, 2006

MUNICIPALITIES REQUIRED TO ADOPT CODES OF ETHICS

Dennis Huffer, Legal Consultant

Public Chapter No. 1 of the Extraordinary Session of the 2006 General Assembly requires municipalities to adopt a code of ethics by ordinance. This must be done by July 1, 2007, or members of the municipal governing body will be subject to ouster. The ordinance restrictions must apply to boards, commissions, authorities, corporations, and other entities created or appointed by the municipality.

The act charges MTAS with developing model ethical standards for municipalities. **Municipalities are not required to adopt the MTAS model, but if they do not, they must send a copy of the ordinance they adopt to the newly created Tennessee Ethics Commission. Municipalities that adopt the MTAS model must simply notify the commission in writing that the MTAS model was adopted, along with the date of adoption. The proposed MTAS model ordinance provisions accompany this bulletin.**

The act also affects entities created by interlocal agreement under the state's general Interlocal Cooperation Act (T.C.A. § 12-9-101 and the following sections) or otherwise. These entities must also adopt an ethics code. Rather

than requiring the ethics provisions to be enacted by the governing boards of these entities, however, the act requires the agreement itself to be amended to include the ethics standards. Therefore, municipalities participating in interlocal agreements should take steps to ensure the agreement is amended to include ethical standards. The accompanying model code of ethics provisions can also be used for this purpose.

The act requires local ethics standards to include two restrictions: (1) rules setting limits on and/or providing for reasonable and systematic disclosure of gifts or other things of value received by officials or employees that affect or appear to affect their discretion, and (2) rules requiring reasonable and systematic disclosure by officials and employees of personal interests that affect or appear to affect their discretion. In the MTAS model, we have combined these two restrictions with other ethics provisions that municipalities have commonly adopted. These model provisions are meant to replace the existing provisions in the municipality's code of ordinances or simply to be added as a new chapter if the code has no similar provisions.



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Dennis Huffer, Legal Consultant

In the first footnote in the proposed model, we note several state statutes that establish ethical provisions for municipal officials and employees. The purpose of including these references along with the ethical restrictions in the proposed ordinance provisions is so municipal officials and employees can consult one source to determine most of the ethical restrictions that apply to them.

As noted above, many municipalities already have ordinances that prohibit the city's officials and employees from accepting any gift or thing of value that could be interpreted as an attempt to influence the officer's or employee's actions with respect to city business. Many have ordinances prohibiting officials and employees from using their positions for personal gain. Many municipalities have also adopted ethics regulations by personnel policy or as part of an employee handbook. Some have ordinances requiring disclosure of personal interests that could affect their decisions.

The question will probably arise whether municipalities can simply send the Ethics Commission a copy of their existing

ordinances that prohibit gifts, using a position for personal gain, etc., and thus satisfy this new law. In most cases this will not be adequate. Although most cities already have ordinances that are more restrictive on receiving gifts and other things of value than those required by the act, most do not meet the disclosure requirements of personal interests. This is perhaps because there is a state law requiring these disclosures for elected officials (T.C.A. § 8-50-501 and the following sections), and municipal officials have seen no need to expand on this law.

The ethics act uses the future imperative "shall adopt" in requiring local governments to enact these ethics provisions. It has no provision recognizing that existing ordinances or policies might be adequate. And, as noted above, most existing ordinances do not require disclosure of personal interests in addition to that already required under state law. For these reasons—and possible ouster for failing to do so—most municipalities would be better advised to adopt either the MTAS model or their own ordinance by June 30, 2007.



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MUNICIPALITIES REQUIRED TO ADOPT CODES OF ETHICS

Dennis Huffer, Legal Consultant

CODE OF ETHICS

Section-by-Section Summary and Explanation

SECTION 1. This section provides that the code of ethics adopted by the municipal governing body applies to all full-time and part-time elected and appointed officials, whether compensated or not. It also applies to members and employees of separate boards, authorities, and commissions created by the municipality. This includes school boards, planning commissions, boards of zoning appeals, beer boards, airport authorities, and housing authorities, among others. These applications of the code of ethics are mandated by the Ethics Act passed by the General Assembly.

SECTION 2. The Ethics Act passed by the General Assembly requires that "personal interests" that affect or appear to affect the actions of municipal officials and employees must be disclosed, but the state statute does not define "personal interests." This section defines those interests. This is a broad definition and is much more encompassing than the state's conflict of interests laws. It includes ANY financial, ownership, or employment interest of an official or employee in a business or entity the municipality does business with, regulates, or supervises. It also includes these interests of the listed family members of the official or employee. It includes situations in which the official, employee, or family member is negotiating employment with an affected entity. There is some overlap with indirect

interests under state law, but most of the situations to which this provision in the code of ethics applies will not be covered by the conflicts of interests laws. An example would be a family member of a member of the governing body who is an employee of a business seeking to do business with the municipality. This would not be a direct or indirect conflict of interests under the state law, but it would be a personal interest that would have to be disclosed under this definition. This section provides that when there is an overlap with the conflicts of interest laws, those laws take precedence.

SECTION 3. This section requires an official with the responsibility to vote to disclose any of his/her personal interests that might affect his/her discretion before the vote so they appear in the minutes. The state statute does not require that an official with a personal interest recuse himself/herself from voting. The implication of the statute is to the contrary and that after disclosure the official may vote. Nevertheless, this section allows, but does not require, the official to recuse himself/herself.

SECTION 4. This section applies to employees and officials who must exercise discretion in matters that do not require a vote. The official or employee should, when possible, disclose the personal interest before the exercise of the discretion. Again,



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Dennis Huffer, Legal Consultant

recusal is not required, but this section allows this when it is permitted by law, charter, ordinance, or policy of the municipality.

SECTION 5. This section prohibits an official or employee from taking any money, gift, favor, or other gratuity from anyone other than the municipality for the performance of an official's or employee's regular duties or that gives the appearance of attempting to influence the actions of the official or employee in carrying out municipal business. This is a somewhat modified version of a provision that most municipalities already had on the books.

An alternative to this gift prohibition that is allowed by the state ethics statute would be to allow gifts and gratuities up to a certain amount but to require reporting of those items. MTAS decided on prohibition because it is simpler to implement and because most cities already had similar provisions.

SECTION 6. This section prohibits officials and employees from disclosing confidential information and from disclosing any other information with the intent to result in financial gain. Again, these are common provisions in ethics ordinances that some cities had already adopted.

SECTION 7. This section prohibits officials and employees from using or authorizing the use of municipal time and facilities for their own financial gain. It also

prohibits this for other entities or individuals unless this is authorized by contract or lease determined by the governing body to be in the best interests of the municipality. This is a provision similar to ones that have been adopted by many municipalities.

SECTION 8. This section prohibits officials and employees from using their position to make private purchases in the name of the municipality and from using their position to gain privileges or exemptions that are not authorized by charter, general law, ordinance, or policy. These provisions are similar to provisions adopted by many municipalities.

SECTION 9. This section prohibits outside employment by officials or employees if the outside work interferes with municipal duties or is in conflict with any provision of the charter, any ordinance, or any policy of the municipality. Many municipalities have adopted similar provisions.

SECTION 10. This section provides methods for bringing and investigating complaints of violations of the code of ethics. The city attorney is designated as the ethics officer and may issue opinions when requested in writing on whether certain conduct would comply with the code of ethics and other applicable law. The city attorney is designated to receive and investigate complaints about officials and employees who are not members of the governing body. The attorney may request



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that the governing body designate another person or entity to act as ethics officer when he/she has a conflict of interests. The governing body must determine the merit of complaints against its members. If the governing body determines that a complaint warrants further investigation, it must authorize the investigation by the city attorney or another person or entity chosen by the governing body.

An alternative to appointing the city attorney as ethics officer would be to appoint another individual, such as another attorney or a retired judge. If a municipality chose to do this, it would probably want to provide for the appointment of the ethics officer after each municipal election. The position could be compensated or uncompensated, although it is unlikely many individuals would be willing to serve if the position is not compensated. Another acceptable alternative would be to establish a board of ethics to perform these functions. For municipalities that choose this alternative, MTAS suggests a three-member board to be appointed by the governing body. Terms should probably be three years.

Because many municipalities already have personnel policies that deal with some of the same behaviors regulated by the code of ethics, this section also provides that when a violation of the code of ethics also constitutes a violation of a personnel or civil service policy, rule, or regulation, the violation would be handled as a violation

of the personnel provisions rather than as a violation of the code of ethics.

This section also provides for a "reasonable person" interpretation and enforcement of the code of ethics.

MTAS chose the above provisions for designating the ethics officer and for handling ethics complaints for the model code of ethics because they seemed simpler, less costly, and most appropriate for most Tennessee municipalities.

SECTION 11. This section provides for punishment for violations. Elected officials and appointed members of boards and commissions are punishable as already provided by law and, in addition, are subject to censure by the governing body. Appointed officials and employees are subject to disciplinary action.

Municipalities that adopt the MTAS Model Code of Ethics must send a notice that it has been adopted, including the date of adoption, to the Tennessee Ethics Commission. Municipalities that do not adopt the MTAS model must send a copy of the ordinance they do adopt to the Ethics commission. Send the notice to

Tennessee Ethics Commission
312 8th Avenue, North
8th Floor Snodgrass Tower
Nashville, Tennessee 37243
E-mail: ethics.counsel@state.tn.us



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Dennis Huffer, Legal Consultant

CODE OF ETHICS¹

SECTION 1. Applicability. This chapter is the code of ethics for personnel of the municipality. It applies to all full-time and part-time elected or appointed officials and employees, whether compensated or not, including those of any separate board, commission, committee, authority, corporation, or other instrumentality appointed or created by the municipality. The words "municipal" and "municipality" include these separate entities.

SECTION 2. Definition of "personal interest." (1) For purposes of Sections 3 and 4, "personal interest" means:

(a) Any financial, ownership, or employment interest in the subject of a vote

by a municipal board not otherwise regulated by state statutes on conflicts of interests; or

(b) Any financial, ownership, or employment interest in a matter to be regulated or supervised; or

(c) Any such financial, ownership, or employment interest of the official's or employee's spouse, parent(s), stepparent(s), grandparent(s), sibling(s), child(ren), or stepchild(ren).

(2) The words "employment interest" include a situation in which an official or employee or a designated family member is negotiating possible employment with a person or organization that is the subject of the vote or that is to be regulated or supervised.

¹State statutes dictate many of the ethics provisions that apply to municipal officials and employees. For provisions relative to the following, see the *Tennessee Code Annotated* (T.C.A.) sections indicated:

Campaign finance—T.C.A. Title 2, Chapter 10.

Conflict of interests—T.C.A. §§ 6-54-107, 108; 12-4-101, 102.

Conflict of interests disclosure statements—T.C.A. § 8-50-501 and the following sections.

Consulting fee prohibition for elected municipal officials—T.C.A. §§ 2-10-122, 124.

Crimes involving public officials (bribery, soliciting unlawful compensation, buying and selling in regard to office)—T.C.A. § 39-16-101 and the following sections.

Crimes of official misconduct, official oppression, misuse of official information—T.C.A. § 39-16-401 and the following sections.

Ouster law—T.C.A. § 8-47-101 and the following sections.

A brief synopsis of each of these laws appears in the appendix of the municipal code.



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(3) In any situation in which a personal interest is also a conflict of interest under state law, the provisions of the state law take precedence over the provisions of this chapter.

SECTION 3. Disclosure of personal interest by official with vote. An official with the responsibility to vote on a measure shall disclose during the meeting at which the vote takes place, before the vote and so it appears in the minutes, any personal interest that affects or that would lead a reasonable person to infer that it affects the official's vote on the measure. In addition, the official may recuse himself² from voting on the measure.

SECTION 4. Disclosure of personal interest in nonvoting matters. An official or employee who must exercise discretion relative to any matter, other than casting a vote, and who has a personal interest in the matter that affects or that would lead a reasonable person to infer that it affects the exercise of the discretion shall disclose, before the exercise of the discretion when possible, the interest on a form provided by and filed with the recorder. In addition, the official or employee may, to the extent allowed by law, charter, ordinance, or policy, recuse himself from the exercise of discretion in the matter.

SECTION 5. Acceptance of gratuities, etc. An official or employee may not accept, directly or indirectly, any money, gift, gratuity, or other consideration or favor of any kind from anyone other than the municipality:

(1) For the performance of an act, or refraining from performance of an act, that he would be expected to perform, or refrain from performing, in the regular course of his duties; or

(2) That might reasonably be interpreted as an attempt to influence his action, or reward him for past action, in executing municipal business.

SECTION 6. Use of information.

(1) An official or employee may not disclose any information obtained in his official capacity or position of employment that is made confidential under state or federal law except as authorized by law.

(2) An official or employee may not use or disclose information obtained in his official capacity or position of employment with the intent to result in financial gain for himself or any other person or entity.

SECTION 7. Use of municipal time, facilities, etc. (1) An official or employee may not use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to himself.

²Masculine pronouns include the feminine. Only masculine pronouns have been used for convenience and readability.



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(2) An official or employee may not use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to any private person or entity, except as authorized by legitimate contract or lease that is determined by the governing body to be in the best interests of the municipality.

SECTION 8. Use of position or authority. (1) An official or employee may not make or attempt to make private purchases, for cash or otherwise, in the name of the municipality.

(2) An official or employee may not use or attempt to use his position to secure any privilege or exemption for himself or others that is not authorized by the charter, general law, or ordinance or policy of the municipality.

SECTION 9. Outside employment. An official or employee may not accept or continue any outside employment if the work unreasonably inhibits the performance of any affirmative duty of the municipal position or conflicts with any provision of the municipality's charter or any ordinance or policy.

SECTION 10. Ethics complaints. (1) The city attorney is designated as the ethics officer of the municipality. Upon the written request of an official or employee potentially affected by a provision of this chapter, the city attorney may render an oral or written advisory ethics opinion based upon this chapter and other applicable law.

(2)(a) Except as otherwise provided in this subsection, the city attorney shall investigate any credible complaint against an appointed official or employee charging any violation of this chapter, or may undertake an investigation on his own initiative when he acquires information indicating a possible violation and make recommendations for action to end or seek retribution for any activity that, in the attorney's judgment, constitutes a violation of this code of ethics.

(b) The city attorney may request that the governing body hire another attorney, individual, or entity to act as ethics officer when he has or will have a conflict of interests in a particular matter.

(c) When a complaint of a violation of any provision of this chapter is lodged against a member of the municipality's governing body, the governing body shall either determine that the complaint has merit, determine that the complaint does not have merit, or determine that the complaint has sufficient merit to warrant further investigation. If the governing body determines that a complaint warrants further investigation, it shall authorize an investigation by the city attorney or another individual or entity chosen by the governing body.

(3) The interpretation that a reasonable person in the circumstances would apply shall be used in interpreting and enforcing this code of ethics.

(4) When a violation of this code of ethics also constitutes a violation of a personnel policy, rule, or regulation or a civil service policy, rule, or regulation, the



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violation shall be dealt with as a violation of the personnel or civil service provisions rather than as a violation of this code of ethics.

SECTION 11. Violations. An elected official or appointed member of a separate municipal board, commission, committee, authority, corporation, or other instrumentality who violates any provision of this chapter is subject to punishment as provided by the municipality's charter or other applicable law and in addition is subject to censure by the governing body. An appointed official or an employee who violates any provision of this chapter is subject to disciplinary action.

MTAS OFFICES

Knoxville (Headquarters) . . . (865) 974-0411	Jackson (731) 423-3710
Johnson City (423) 854-9882	Nashville (615) 532-6827
(423) 282-0416	Martin (731) 881-7057

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City (or Town) of _____

Disclosure of Personal Interest

This form should be filled out and filed with the recorder or clerk by any municipal employee or official, except those who serve on boards or other bodies, who must exercise discretion relative to any matter and who has a personal interest in the matter. A personal interest is any financial, ownership, or financial interest in a matter to be regulated or supervised by the employee or official that could affect the employee's or official's discretion. This includes any financial, ownership, or employment interest of the employee's or official's spouse, parent(s), step parent(s), grandparent(s), sibling(s), child(ren), or step child(ren). "Employment interest" includes any situation in which the employee or official or one or more of his or her family members designated above is negotiating possible employment with a person or organization that is to be regulated or supervised by the employee or official in carrying out municipal business. Use item 1 of this form to report individual occurrences and item 2 to make a yearly report of situations that will occur more than once during a calendar year.

NAME OF EMPLOYEE OR OFFICIAL: _____

1. Individual occurrence

BRIEFLY DESCRIBE THE SITUATION IN WHICH YOU MUST EXERCISE DISCRETION AND IN WHICH YOU HAVE A PERSONAL INTEREST THAT COULD AFFECT THAT DISCRETION:

2. Continual occurrences

FOR INDIVIDUALS, BUSINESSES, OR ENTITIES THE MUNICIPALITY WILL ENTER INTO TRANSACTIONS WITH MORE THAN ONCE EACH CALENDAR YEAR AND IN WHICH YOU HAVE A PERSONAL INTEREST, YOU MAY MAKE ONE (1) DISCLOSURE FOR THE CALENDAR YEAR BY REPORTING HERE:

Name of Individual, Business, or Entity _____

Briefly describe the transactions that will take place between the municipality and the named entity during the calendar year in which you will exercise discretion and in which you have a personal interest that could affect that discretion:

Date: _____

Employee's or Official's Signature