

Establishing, Following Ethics Rules Raises the Level of Trust



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"All government, of right, originates with the people, is founded upon their will only, and is instituted solely for the good of the whole. Public officers are trustees and servants of the people and are at all times amenable to them."

These words in Article 1, Section 2, Paragraph 1 of the Georgia Constitution set the tone for ethical conduct for public officials at the state and local level. They remind public officers that they are held to a higher level of conduct and accountability. Mere honesty is not enough. Public officials as trustees must act solely in the interest of the beneficiaries of that trust. The beneficiaries are the voters, taxpayers and public at large. It is their welfare that must be promoted by the actions of the public official. Also, as servants of the people, public officials are reminded that they have a duty to meet the needs of the people. However, this duty is met not merely by blowing with the political winds or following the whims of the people; it is carried out by responsible and educated leadership.

GMA appointed an Ethics Task Force in 1998 to address concerns after a study showed a trend toward less confidence in public officials. While GMA believes that the overwhelming majority of municipal elected officials are honest and ethical, it was determined necessary to address the public's perception. The Ethics Task Force was comprised of municipal elected officials, community and industry leaders and academics. The result of their work was the publication of a "Model Code of Ethics for Georgia City Officials" in September 1999 and the implementation of GMA's Certified City of Ethics program.

The GMA Certified City of Ethics program requires that cities adopt a resolution acknowledging and subscribing to five ethics principles as well as an ordinance to govern the conduct of elected officials. The five ethics principles included in the resolution are as follows:

- Serve Others, Not Ourselves
- Use Resources with Efficiency and Economy
- Treat All People Fairly
- Use the Power of Our Position for the Well Being of Our Constituents
- Create an Environment of Honesty, Openness and Integrity

The ethics ordinance adopted by the city must contain, at a minimum, definitions, an enumeration of permissible and impermissible activities by elected officials, due process procedures for elected officials charged with a violation of the ethics ordinance and punishment provisions for those officials who violate the ethics ordinance.

The resolution and ordinance are then reviewed by the GMA Ethics Certification Committee, which determines if the ethics materials submitted by the city meet the standards for certification as a City of Ethics. Through review of city ethics ordinances the GMA Ethics Certification Committee has become aware of common shortcomings in local ordinances.

Don't Conflict with the Charter

First, the governing authority needs to ensure that their city charter allows adoption of an ethics ordinance and does not conflict with or preempt it. Because the charter takes precedence over any ordinance, it is important that the charter and ethics ordinance work together, not at cross-purposes. For instance, the charter may contain provisions on removal from office and the standards for removal that are inconsistent with the ethics ordinance. One simple way to clarify any uncertainty your city may have about the authority to have an ethics ordinance is to amend the city's charter under your Home Rule powers found at O.C.G.A. Section 36-35-3 to specifically authorize your ethics ordinance. This is a process that needs to be guided by the city attorney.

Due Process

Second, the ethics ordinance should contain a provision that specifies the procedure that should be followed in filing a complaint, specifies how a Board of Ethics is selected and conducts its affairs and acknowledges the right of an official charged with a violation to notice of the charges, representation by legal counsel and an adequate opportunity to respond to the charges. You may want to look at the procedures in the Marietta or Roswell ordinances in the GMA publication, "Model Code of Ethics for Georgia City Officials."

Penalties

Third, many local ethics ordinances contain monetary fines in addition to sanctions such as public censure or reprimand and a request to resign from office. The members of the GMA Ethics Certification Committee continue to have concerns about the legal enforceability of monetary fines for violation of an ethics ordinance. Again, this is a matter to be discussed with the city attorney.

Free Speech

Fourth, although it is laudable to make every effort to avoid even an appearance of impropriety, some ethics ordinances may go too far in restricting the ability of elected officials to also act as individuals within the community affected by the actions of the city. While an elected official may have a conflict of interest and be ineligible to vote on a matter in which they are financially interested, attempting to prevent council members from speaking to other members of the city council as a city resident rather than an elected official may in certain contexts unduly infringe on that person's right to free speech and right to petition their government for redress of grievances. Additionally, some local ethics ordinances attempt to regulate the conduct of candidates for office or those elected who have not yet taken office. It is not clear that local ordinances can regulate this conduct. Again, the city attorney should be consulted for guidance in these areas.

Conflicts of Interest

Fifth, it is important to remember that just because an activity is free from criminal sanction or does not violate the city's ethics ordinance does not necessarily mean that it is ethical or legal. This concern particularly arises where ethics ordinances attempt to define the nature and limits of a "personal interest" prohibiting an elected official from voting on that matter. Although such definitions can be useful, a contract may be invalidated on the ground that it violates good public policy and the constitutional principles of public trusteeship. The courts may view a transaction as a common law conflict of interest even though no statute or ordinance was violated.

A number of ethics ordinances also contain a provision prohibiting local officials from engaging in any employment or rendering of service that is adverse to and incompatible with the proper discharge of official duties. Some of these ordinances exclude licensed professionals from the application of this prohibition. City officials should never engage in an activity which is incompatible with the proper discharge of official duties. These are also areas to be reviewed with the city attorney.

GMA has supported and promoted the use of a local ethics ordinance as they allow citizens to raise their concerns and participate in the ethics investigation process at the local level, where the voice and influence of the individual citizen is strongest. Local ethics ordinances also provide an opportunity for local elected officials to win the trust of the people they serve by voluntarily holding themselves to high levels of ethical conduct.