

# MARYLAND MUNICIPAL LEAGUE

## *Ethics Program Manual*

*June 24, 2019*

### **Ethics “Thumbnail”**

Don't take gifts from persons that do business with your city/jurisdiction  
or its agencies, boards, etc.  
Don't participate in decisions, etc., that affect persons in your family or with  
whom you or your family have an interest, financial or otherwise  
Perform your service with dignity and integrity – and as if all that you do  
will be known to the public at large  
Maintain required confidentiality & privilege

### **THINK**

Who are the players?  
What is being done, proposed, etc.?  
What is your role?  
What can go wrong?  
Do you have doubts?  
You are not alone – Seek assistance!

Presented by: Ernest A. Crofoot, Attorney  
[ernicrofoot@gmail.com](mailto:ernicrofoot@gmail.com)  
410-708-9603 (cell)

Ethics Program Manual

June 24, 2019

Manual Contents

- I. Course Program - Outline
- II. Scenario Discussions (obtain packet at end of program)

Program

I. Learning Objectives:

- 1. The significance of ethical behavior in local government
- 2. Legal map of Maryland and Local Ethics Law - Title 5 of the General Provisions Article of the Annotated Code of Maryland<sup>1</sup>.
- 3. A better understanding of what constitutes unethical behavior
- 4. How ethical lapses happen: lack of attention to detail, pride, greed, *failure of moral courage*
- 5. Consequences of unethical behavior; to the person and to the entity: order of compliance, reprimand, recommendation for censure or removal, fines, discipline under personnel rules, etc.
- 6. Why do we need Ethics Codes? - See p. 10 for recent exploits of the ethically challenged
- 7. Nan's Law
- 8. (Agnes) Allen's Law

***"You are also moral leaders, whether you will it or not. How can you avoid it?  
Consider your rank and duty: You are the keepers of the law, who see to its application  
and interpretation in the affairs of our people."***

*---Royal Shannonhouse*

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<sup>1</sup> The course is generally geared to State law and §, title, and subtitle references are to the General Provisions Article.

II. State Law Objectives: Maryland has set out its standards in Title 5 of the General Provisions Article of the Annotated Code, providing that THE PEOPLE are entitled to:

1. The highest trust in government
2. The assurance of independent judgment
3. The assurance of impartiality
4. No improper influence over officials and employees
5. No appearance of impropriety or improper influence
6. No self-enrichment

**Scenario No. 1** (if time permits)

*A major snowstorm has been forecasted for the area. The public works director of your small town has directed his most reliable truck driver to drive to a salt supply depot operated by a consortium of counties and municipalities, more than 50 miles away to pick up a trailer load of salt. He made it clear to the employee that unless he could bring back the salt immediately the road crews would be helpless.*

*When the driver arrives at the depot, he finds that he is at the end of a long line of trucks, including tandems. The driver realizes that unless he is lucky he will arrive home too late to get there before the storm begins. Then he notices that a depot employee is moving down the line of trucks and that, on occasion, a truck pulls out and goes to the front of the line. When the employee reaches the driver's truck, the driver finds out why: for an extra \$50 in cash he, too, can go to the head of the line and load up quickly. The driver doesn't hesitate; he pays the extra \$50 and within a short time is on his way home.*

*When he has delivered his load, he tells the public works director the story and asks to be reimbursed for the \$50. The director refuses, saying that he doesn't know how he can authorize such a payment.*

*Did the employee act appropriately? Should the employee be reimbursed?*

*Suppose the employee calls the public works director on his cell phone for advice? What should the director do?*

**Scenario No. 2** (discuss)

*You "run the shop" at your public works department, overseeing the servicing of town owned vehicles, repairing road equipment, and the like. One morning, the public works director asks you to install a new rifle rack he has purchased in his personal vehicle, and to do it before lunch, as he is leaving that day on a hunting trip. You know that this request is improper, but he is your immediate supervisor, and essentially controls your evaluations, etc.*

*What should you do? How do handle this with as little risk to yourself as possible, yet remain ethical?*

III. Conflicts of Interest – Subtitle 5:

1. Terms and concepts such as “conflict” and “interest” often are not recognized in ethical scenarios. The terms are intuitive and obvious in code language.
2. Under the § 5-101(t) of the Code, “interest” is broadly defined as “a legal or equitable economic interest.” This is an acceptable definition when talking about an interest as a thing, such as an interest in a business, but “interest” generally can be much broader in ethics applications. For example, would you have an interest in your child being gainfully employed and off your expenses?
3. Types of conflicts - general

Personal  
Employment  
Familial  
Friends  
Financial  
Other

**Scenario No.3** (if time permits)

*Robert Smith owns an electrical contracting service in your city. He is also a member of the city’s planning and zoning commission. A developer/builder is appearing before the commission to seek approval to build a housing development. The developer/builder will be subcontracting the electrical work needed for the new homes. Smith’s company has worked with the developer/builder on other projects.*

*Smith’s company will not bid on the job. Smith has committed to a long-term job involving the electrical work for another project (a mall). The mall is to begin construction in nine months, just before the developer/builder proposes to start construction.*

*The developer/builder has asked Smith to speak on his behalf before the commission and attest to the quality of the developer/builder’s work.*

*A. Is it ethical for Smith, as a commission member, to vote on the developer/builder’s proposal?*

*B. Is it ethical for Smith to speak on behalf of the developer/builder before the commission?*

*C. What is the best course of action for Smith?*

*D. Does it matter if Smith’s seat is to be held by a building tradesman?*

4. Code specified:

§ 5-501 – Cannot participate if you or relative have a financial interest in the matter (or in an entity having an interest in the matter)

E.g., awarding municipal banking contract to or obtaining a municipal loan from your family owned bank

Exceptions: less than a quorum; required by law to act; only official authorized to act (§ 5-501(c))

§§ 5-502 through 504 – Cannot have conflicting employment or financial interest – cannot be involved in matters

Current employment – Many government officials, particularly elected officials, have concurrent employment

Subsequent employment – e.g., representing a company on issues you handled in government employment (“significant participation”) (§ 5-504(d)(1)).

Past employment – Making decisions on matters affecting your former employer. See also § 5-506.

**Scenario No. 4** (discuss)

*Bob was the planning director for Xberg for many years. Over that period of time, Bob often spoke with the town officials regarding the need for zoning and other regulations restricting “adult” entertainment. Although the town had a few very general provisions, Bob always felt that much more was needed, and often pointed out the shortcomings of the current provisions to town officials.*

*About a year ago, Bob resigned after a falling out with the Mayor. During that time he completed his law degree and passed the bar exam. He now represents “XAV Books,” an adult bookstore whose occupancy certificate application the town was in the process of denying at the time he resigned.*

*May Bob represent XAV?*

*Would it matter if this were a new application?*

*Suppose Bob was the town administrator and did not have authority over such matters, but knew of the code provisions and was on very good terms with all of the town staff?*

§ 5-506 – Cannot use prestige or weight of office for self enrichment or enrichment of others – often very broadly construed; e.g. job referrals (?), external only (?)

**Scenario No. 5** (discuss)

*Ollie Owner is the owner of the Owl Pub. For many years, the town was without a first-class restaurant. Ollie responded to the Town's economic development advertisements and, after negotiating with the Town for some incentives, opened the Owl Pub. It has been an immediate success, with long waiting times for tables, except for the Mayor. To show his gratitude, Ollie has instructed the staff that the Mayor always gets the next available table. Oftentimes, Ollie will send over a free dessert or complimentary beverage to the Mayor and his party, or "comp" the Mayor's lunch. Do either the "no wait" or the "comped" food and beverage violate ethics restrictions?*

**Scenario No. 6** (if time permits)

*You are a council member in a jurisdiction that has a separately elected chief executive/mayor. A friend who works in the public works department is the subject of a report by the department head concerning alleged acts of insubordination.*

*Your friend asks you to speak with the department head, who is planning to submit the report to the chief executive/mayor. Your friend says the charges are not true. He believes he performs his job well, and states that the director is just out to get him. You know the department director well.*

*Is it ethical for you as a council member to speak with the department director on behalf of your friend?*

*Would your answer be different if the council also performed the executive function?*

**Extra Discussion Scenarios** - *Hiring Relatives for part-time/summer programs; circumventing purchasing restrictions*

§ 5-505 – Cannot **EVER** solicit gifts for self or others; may not accept gifts (with certain exceptions) from:

Person doing, or seeking to do, business with the government unit

Person engaging in an activity regulated or controlled by the governmental unit

Person having a financial interest that may be differently affected (as opposed to the public in general) by the performance or non-performance of the official's duties

Regulated lobbyist with respect to matters within the recipient's jurisdiction

**Scenario No. 7** (if time permits)

*You are the Chief of Police for the Town. For years you have been sending your best marksmen, at Department expense, to an annual multi-state competition sponsored by an association of Chiefs of Police. You believe it is good for morale and will keep your officers up on training, provide motivation, etc. Your two-member team wins the event. The award is a "recreational" rifle (i.e., not one generally used in law enforcement) and a scope – with combined value of \$4,000.00. The team members obviously want to keep these prizes. Can they? How can this be done to avoid ethics issues? Would it matter if the prizes were sponsored by a manufacturer with whom you do business – e.g., purchase of firearms, ammunition, vests, etc.?*

**Scenario No. 8** (discuss)

*You are the Director of Licenses and Permits for your growing city. Part of your duties involves reviewing permit applications for outdoor concerts at the local fairgrounds. A new promoter has submitted a permit application which, in your mind, leaves a number of safety issues "on the edge." To allow you to see his operation "up close" he provides you with two passes to the next three events at a neighboring venue which he manages.*

*After attending the entirety of, and thoroughly enjoying, all three events (Bob Dylan, Madonna, and the City Philharmonic) you determine that the procedures proposed do not create too significant a risk, and issue the permit. Have you violated any ethical standards?*

§ 5-505(c) Exceptions include:

- Meals and beverages received and consumed in the presence of the donor
- Ceremonial gifts or awards of insignificant value (\$20.00)
- Private gifts
- Unsolicited gifts of nominal value (\$20.00)
- Trivial gifts of informational value (\$20.00)
- REASONABLE** costs for speaking or program participation
- Tickets (see below) – a dangerous area

**Scenario No. 9**

*The ABC Company contacts you, the city/town manager, about the possibility of relocating from another state to your community. This would mean many new jobs for your city/town and increased local tax revenues.*

*The company president and three of his officers want to take you to lunch at an expensive restaurant to discuss their plans. Your city/town does not provide you with a budget for entertaining. The company president insists on paying for lunch.*

*Do you accept the invitation? Should city/town officials accept invitations to lunch or other activities to promote the city's/town's interest in the business world? Where should a city/town official draw the line?*

§ 5-505(c)(2)(viii) – Under general State law, tickets must be:

To an elected constitutional officer; from the sponsor of the event; as a courtesy or ceremony to the office; to attend a cultural, charitable, or political event.

**WHEN IN DOUBT, PAY FOR THE TICKET!**

**NOTE: EVEN IF A GIFT FALLS INTO ONE OF THE EXCEPTIONS, IT IS STILL NOT ALLOWED IF IT WOULD TEND TO IMPAIR INDEPENDENCE, WOULD GIVE THE APPEARANCE OF SUCH, OR YOU KNOW OR SUSPECT THE GIFT IS INTENDED TO INFLUENCE YOUR INDEPENDENCE!**

**§ 505(c).**

**Extra Discussion Scenario**

*The City's Purchasing Director has been selected by a large publishing and software company to receive its (allegedly) prestigious national award for procurement system processes and electronic purchasing. The award is a plaque and \$75,000.00. Can he accept the cash award?*

*Can he accept the cash award if the City buys a large amount (or any amount) of its materials from the company?*

*Does it matter if the award is granted on the basis of anonymous nominations? How about if the Mayor nominated the Director?*

- IV. Privilege – Members of public bodies, including boards and commissions, are NOT entitled to waive a privilege belonging to or confidentiality maintained by that body.

**Scenario No. 10**

*You are a city council member. You were recently briefed by the city attorney on certain matters affecting development in your city. The council voted 4-1 (you voted against) to delay any action on the privileged report, prepared and presented as a result of some on-*

*going litigation, until a final review is completed by the city attorney and a final recommendation is made. The report and ensuing investigation could have an effect on property values in the business district. You have a close relationship with a certain business group that is considering a substantial investment and which could benefit from the information.*

*You “leak” the information to a friend. Have you acted ethically? Have you violated any provision of your ethics code?*

*Would it matter if you leaked the information to a “friendly” reporter solely because you felt strongly that the public had a right to know the information immediately?*

## V. State Requirements for Local Governments – Subtitle 8

1. All counties and municipalities **must** have an ethics code. § 5-807; certain small municipalities may be exempted. See § 5-209.

2. Codes must address:

Financial disclosure  
Conflicts of interest (including gifts)  
Lobbying

3. S.B. 315 passed in the 2010 session, ch. 277, requires county and municipal corporation conflict of interest and financial disclosure provisions for elected local officials and school board members to be equivalent to or exceed State conflict of interest and financial disclosure requirements, subject to local modifications if necessary. All jurisdictions having codes have been required to update their codes to the strictness of State law. The State Ethics Commission has provided sample codes.

### **ONLY ELECTED OFFICIALS AND SCHOOL BOARD MEMBERS ARE REQUIRED BY STATE LAW TO FILE “STATE LEVEL” DISCLOSURE FORMS**

The provisions or regulations must require an elected local official or school board member to file a financial disclosure statement on or before April 30 of each year. The local ethics commission or the appropriate entity of each county and municipal corporation is required to certify to the State Ethics Commission on or before October 1 of each year that the county or municipal corporation is in compliance with the requirements for the updated codes. The new disclosure for local elected officials is much more detailed than most local jurisdictions required in the past. A candidate for election to an office of an “elected local official” is also required to comply with the financial disclosure requirements of the Maryland Public Ethics Laws.

Senate Bill 474, ch. 457, 2018 Laws of Maryland also requires that local ethics commission or other appropriate entities shall meet at least once a year and on or before October 1 of each year file a report to the local governing body, which report

shall include number of meetings held; copies of meeting agendas and minutes for each meeting; copies of signed and dated attendance sheets; other material showing the work of the body for the year previous.

4. See Code of Maryland Regulations (“COMAR”), Title 19A Appendix A, for Model Codes suggested by the State Ethics Commission.

5. Confidentiality. Certain identifying material in advisory opinions may be kept confidential under the State’s Code. See § 5-303. Opinions on actual complaints are confidential. See § 5-407. Similar provisions can be included in local codes and are encouraged, in our view. Such provisions promote requests for advisory opinions to avoid violations and enhance the reporting of actual complaints.

#### VI. Enforcement

Ethics Codes must contain penalties for violations; including e.g. injunctions, fines, etc. In addition, Ethics Codes should be cross referenced to the jurisdiction’s Personnel Code/Regulations, so that an ethics violation will have personnel discipline consequences as well.

#### VII. Some obvious examples of bad behavior

1. Accepting gift from someone doing business with your jurisdiction
2. Being involved in a business that is regulated by your jurisdiction
3. Failing to disclose an interest in a business doing business with your jurisdiction
4. Falsifying an expense account, e.g. cell phones, travel and entertainment, personal purchases
5. Using insider information for yourself or others
6. Using your position for personal gain or gain of another
7. Using government employees for private work
8. Decision making under a conflict
9. Hiring relatives – nepotism
10. Using government materials or equipment, or inducing employees to work in, an election campaign or a personal endeavor or business
11. Revealing confidential information

#### VIII. Some web sites of interest:

1. State Ethics Commission: [www.ethics.maryland.gov](http://www.ethics.maryland.gov)
2. Maryland Attorney General: [www.maryland attorneygeneral.gov](http://www.marylandattorneygeneral.gov)
3. Code of Maryland Regulations (“COMAR”) and the Maryland Register: [www.dsd.state.md.us](http://www.dsd.state.md.us) (click on desired item)